

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6 RUDOLPH W. GIULIANI, Lead Case No.
7 Debtor. 23-12055-shl

8 - - - - -x

9 RUBY FREEMAN, ET AL,
10 Plaintiff,

11 v.

12 RUDOLPH W. GIULIANI, Adv. Proc. No.
13 Defendant. 24-01320-shl

14 - - - - -x

15 United States Bankruptcy Court
16 300 Quarropas Street
17 White Plains, New York

18
19 June 17, 2024

20 12:07 PM

21 B E F O R E:

22 HON. SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: ART

Case Management Status Conference

Doc. #233 Motion of the Official Committee of Unsecured
Creditors of Rudolph W. Giuliani for Entry of an Order
Directing the Immediate Appointment of a Trustee

Doc. #197 Motion of the Official Committee of Unsecured
creditors of Rudolph W. Giuliani to Compel the Debtor to (I)
File Delinquent Monthly Operating Reports and (II) File Timely
Future Monthly Operating Reports

Discovery Conference Re: Doc. #164 Order Signed on 4/11/24,
Granting Motion of the Official Committee of Unsecured
Creditors for the Entry of an Order Pursuant to Bankruptcy Code
Section 105 and Federal Rule of Bankruptcy Procedure 2004
Authorizing Discovery of the Debtor and Third Parties

Adversary proceeding: 24-01320-shl Freeman et al v. Giuliani
Pre-trial Conference

Adversary proceeding: 24-01320-shl Freeman et al v. Giuliani
Doc. #5 Scheduling Order

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. Let me first thank the
3 parties for their patience in waiting as we went through the
4 morning calendar which was proof, once again, that I never
5 quite know how long that's going to take. And so -- but I
6 recognize you all have other things to do with your lives. So
7 thank you for your patience.

8 And so as everyone knows, we're here for the Rudolph
9 Giuliani case. And so we'll get appearances. And before I do
10 that, I just note that obviously we're hybrid. There's folks
11 who are here in the courtroom. I appreciate you being here in
12 the courtroom. As one of the hearings this morning
13 demonstrated when I had to raise my voice to pierce through the
14 technological divide of me being here and people being on Zoom,
15 it's much easier to have arguments in person. And so thank you
16 very much for being here.

17 And so to the extent that anyone has any issues
18 hearing anyone, let me know. And for anybody who's on Zoom,
19 make sure that your microphone is muted unless you're speaking.

20 And the last bit of practical advice is, as I think
21 you all know, there are microphones here, the traditional
22 looking microphones that handle amplification in the courtroom.
23 And then for purposes of Zoom, there are these lovely little
24 square things. So just try to make sure you're near both when
25 you talk so that everybody can hear you not only here but on

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1 Zoom as well.

2 So with that, we'll proceed to appearances. And so
3 first, on behalf of the debtor.

4 UNIDENTIFIED SPEAKER: Judge, if I could just
5 interrupt. We don't have a Zoom -- here's or on the --

6 THE COURT: Yeah. So I would just say you can use
7 that one.

8 UNIDENTIFIED SPEAKER: Okay.

9 THE COURT: And they are fairly sensitive, so I think
10 that one should cover everybody.

11 And I guess the last thing in connection with that,
12 I'm happy to hear people wherever they want to argue. If you
13 want to do it from the table, you want to do it from the
14 podium. And again, if anybody has any trouble hearing, the
15 people on Zoom can just wave their hands. And that'll catch
16 everyone's attention. And we'll make sure to remedy any
17 problems we might have.

18 So with that, on behalf of the debtor?

19 MR. BERGER: Sure. Good afternoon, Your Honor. Heath
20 Berger, Berger, Fischhoff, Shumer, Wexler & Goodman, attorney
21 for the debtor. I also have my partner, Gary Fischhoff, on my
22 left. And on my right is Ken Caruso.

23 THE COURT: All right. Good morning -- well, good
24 afternoon to you all.

25 And on behalf of the Official Committee of Unsecured

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1 Creditors?

2 MS. BLOCK: Good afternoon, Your Honor. Rachel Biblo
3 Block with Akin Gump Strauss Hauer & Feld on behalf of the
4 official committee. And I'm joined by my colleagues Phil
5 Dublin, Abid Quresh, Amelia Danovitch, and David Hill.

6 THE COURT: All right. Good afternoon to you all.

7 And on behalf of the parties that we have been
8 referring to as the Freeman plaintiffs?

9 MS. STRICKLAND: Good afternoon, Your Honor. Rachel
10 Strickland, Willkie Farr & Gallagher. I'm joined by Jim
11 Burbage and Aaron Nathan.

12 THE COURT: All right. Good afternoon.

13 And let me find out, anyone else who's here in the
14 courtroom who wishes to make an appearance? You can wander
15 over to a microphone. All right. See no one else who needs to
16 make an appearance?

17 I do see the United States trustee's office on the
18 Zoom. So let me get that appearance.

19 MS. SCHWARTZ: Thank you, Your Honor. Andrea Schwartz
20 for the United States Trustee. And I'll do my best so that you
21 don't have to yell at me because I'm on Zoom.

22 THE COURT: That's fine. Life's not an exact science.
23 We all know -- that's fine. I'm sure we'll make it work.
24 And --

25 MS. SCHWARTZ: Well, I very much appreciate Your Honor

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1 letting me appear by Zoom. I'm still struggling with that
2 stress fracture in my foot. Otherwise, I would be there too.

3 THE COURT: I appreciate that now more than ever as my
4 wife broke her shoulder about ten days ago. So more
5 information than you want.

6 So I also see the debtor, Mr. Giuliani, on the Zoom.
7 He doesn't have to make an appearance. But I wanted to let you
8 know that I could see you. And it's I'm assuming that means
9 you can see everybody in the courtroom as well.

10 THE DEBTOR: I can, Your Honor. Thank you.

11 THE COURT: All right. You're welcome.

12 Anyone else who's on Zoom who needs to make an
13 appearance?

14 MR. GLUCKSMAN: James B. Glucksman, observing the
15 hearing for Davidoff Hutcher & Cintron, a creditor.

16 THE COURT: All right. Good afternoon. Anyone else?

17 All right. So with that, I do have a copy of the
18 agenda that was filed for today's hearing at docket 258. It
19 may be the only thing that the parties agree upon, but it lays
20 a proposed order for proceeding, starting with the motion to
21 appoint a trustee and then segueing later to a motion to compel
22 monthly operating reports and then to a discovery conference.

23 So I'm assuming that that's something that parties
24 embrace in terms of the order of proceedings. That seems to be
25 sensible. And so, but before we get to the motion, any

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1 motions, we're also here for a case status conference.
2 Obviously, we'll be talking about the status conference of the
3 case in connection with the first motion. But if there's
4 anything that's particularly noteworthy or appropriate to
5 address before we get into the motion, I'll be happy to hear
6 it. So anything from debtor's counsel on that front?

7 MR. BERGER: Not at this point, Your Honor. I have a
8 feeling as we go through the motions, there may be some things
9 we want to interject onto it. But I think at this point, the
10 motion probably makes the most sense to proceed forward. And
11 then we could start -- backtrack to some status.

12 THE COURT: I think that that's right. So thank you
13 very much for that.

14 MS. SCHWARTZ: Your Honor?

15 THE COURT: Yes.

16 MS. SCHWARTZ: This is Andrea Schwartz for the U.S.
17 Trustee.

18 We have something that we would want to bring up at
19 the case conference, but we're happy to do that in between the
20 motion for the trustee and the discovery conference, if that
21 would work for Your Honor.

22 THE COURT: That would. I think that's an appropriate
23 way to handle that. So thank you very much for the suggestion
24 on that score.

25 All right. So with that, it is the motion filed by

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1 the official committee. And keeping with traditional practice,
2 I'll hear from them first.

3 MS. BLOCK: Good afternoon, Your Honor. Rachel Biblo
4 Block With Akin Gump Strauss Hauer & Feld on behalf of the
5 official committee of unsecured creditors.

6 Before I get started, can we share the screen?

7 THE COURT: Yes. There is a PowerPoint. And the
8 screen is going to be shared so that folks who are on Zoom can
9 also see it. And I assume the copy of the PowerPoint has been
10 shared with all parties so that everybody has it. No. Is that
11 yes or no? I wanted to make sure everybody has a copy.

12 And so what I'm going to do just for one second before
13 we start, it's not an evidentiary hearing in the sense of
14 anybody is being put on the stand. And so nobody's going to be
15 examined. And so under those circumstances, there isn't quite
16 the same concerns about PowerPoints. But certainly, if
17 debtor's counsel and all other interested parties want to take
18 a look at the PowerPoint briefly before we start to say you
19 haven't seen it before, that, that makes sense. I'll give you
20 a minute or two to do that. That would be helpful.

21 MS. SCHWARTZ: Thank you, Your Honor.

22 UNIDENTIFIED SPEAKER: We have not seen it before.

23 THE COURT: All right.

24 MS. SCHWARTZ: If someone could just email me a copy
25 of it so I can look at it while they're making their

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1 presentation, that would be very helpful.

2 THE COURT: All right. So we're going to get that
3 done. So sorry. I should have mentioned this while we were at
4 break if I had thought about it. But that's fine. We'll just
5 take a minute or two. I'm assuming that's happening as we as
6 we sit here. So let's give a minute. Everybody can flip
7 through. And then we'll pick up with the argument in a minute.

8 And I will just inject what you all know to be the
9 case. I consider this as argument. It's not evidence. It's a
10 demonstrative. So it's only as good or as not good for lack of
11 a legal term as whatever supports it. And you can obviously
12 feel free to address whatever points as you respond, but that's
13 how I consider it.

14 MR. FISCHOFF: I understand. And clearly it's not
15 evident. But I am a little bit unnerved by the fact that the
16 first time I received it was just now, not an hour before when
17 I was waiting in the hallway and not previously at all. And I
18 object to the Court even reviewing or having them use it as
19 something to aid them in their argument. They could have sent
20 it to me in advance. I could have reviewed it. I don't know
21 what's in it. I don't know if there's new stuff in here, if
22 there's items that were already included in the motion.

23 THE COURT: So --

24 MR. FISCHOFF: It's totally uncalled for, unnecessary.
25 And I ask the Court to just not allow them to use it at all.

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1 THE COURT: Well, here's --

2 MR. FISCHOFF: It could have been given an hour --

3 THE COURT: Here's what I'm going to do. If there's
4 anything new and that wasn't included in the papers, you can
5 certainly make an objection and respond.

6 The challenge for these kinds of motions is oftentimes
7 it is writ large the bankruptcy saying we're litigating in real
8 time, that people say, Judge, there's this issue and we
9 addressed it last week. And so there's always a concern about
10 a shifting narrative over time. And so I don't want to be in
11 the business of precluding anybody from essentially saying what
12 they want to say based on where they are.

13 But to the extent anyone thinks there's unfair
14 surprise, you should identify it and tell me that. And that's
15 fine. And I understand that point of view.

16 My sense in looking at it is that it repeats in sort
17 of summary PowerPoint form of what's in the papers,
18 particularly the reply. And so it's essentially just a way to
19 walk through a presentation. But to the extent it's more than
20 that, certainly you have a right to make that argument. And
21 again, I'm only considering it as argument. If it's not in the
22 motion or the reply for purposes of today, I will have sort of
23 a separate filter and category for things that are not in the
24 motion, the opposition, and the reply. And that will -- that
25 sort of applies to both sides or all sides in the sense that

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1 these motions often do have parties come in saying, well,
2 Judge, things have changed since papers were filed and now the
3 facts are X, Y and Z. So how I can consider that -- I should
4 consider some of that in the sense that what we're talking
5 about is progress in the case. That's certainly a -- to dumb
6 it down to layperson's terms, that's a lot of what the motion
7 is about is whether there's been progress. So --

8 MR. FISCHOFF: I just have two brief things to say on
9 that. This is twenty-nine pages long. There's no way I can
10 know sitting here today if everything in here was previously
11 presented in the earliest papers or not.

12 THE COURT: Well, so --

13 MR. FISCHOFF: And 2 --

14 THE COURT: So here's what I'll say on that, is I'm
15 only going to consider what's in the papers and what's argued
16 here today. So if there's something in here that doesn't fall
17 into either category, I'm not going to go looking for, as My
18 Cousin Vinny says, the case cracker in in some text that wasn't
19 discussed. I'm not a fan of that. And for evidentiary
20 hearings, for example, people give me a stack of something.
21 I'll say you should identify chapter and verse of this that's
22 relevant because we're not going to have somehow on appeal some
23 other issue that nobody talked about be what's dispositive. So
24 that same rule applies here. So I intend to use this as a
25 summary.

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1 The other thing I'm saying, I'm always happy to if
2 people want to have PowerPoints to aid in their presentation,
3 that said, I will ask questions and it almost inevitably
4 necessitates people jumping around a bit. So I apologize in
5 advance for that.

6 MR. FISCHOFF: And one other just minor point. The
7 cover of this presentation labels it as attorney advertising.
8 Just thought I'd point that out to the Court, that the people
9 prepared it consider it advertising.

10 THE COURT: Well, happily I'm free of the burdens of
11 such concerns as my clients just appear on a regular basis,
12 regardless of any advertising that we conduct. So I'll -- I'm
13 putting an X through that --

14 MS. BLOCK: Yes.

15 THE COURT: -- because it's irrelevant and it's a
16 perfect example of something I'm not going to consider. But
17 again, my thought is the idea is here. There's no surprise.
18 I'm not going to rely on anything that that people have heard
19 for the first time and haven't had a chance to respond to. So
20 that applies for anything that people argue and anything that's
21 in a PowerPoint.

22 So that's a -- that's a fair point. And I will also
23 make sure to take a break before we're concluded. That way, if
24 there's anything that that people need a chance to sort of take
25 a look at to identify, we'll make sure we get it done in the

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1 way that's appropriate and fair.

2 MS. BLOCK: Thank you, Your Honor.

3 THE COURT: All right. With that, I'll turn it over
4 to the trustee.

5 MS. SCHWARTZ: Your Honor?

6 THE COURT: I'm sorry. Yeah.

7 MS. SCHWARTZ: I still don't have a copy of it.

8 MS. BLOCK: Apologies. It's in my outbox.

9 THE COURT: All right. Yeah, people may be used to
10 the Wi-Fi at Bowling Green, which is fairly robust. It's more
11 of a new thing up here in White Plains. So if you let me know
12 when that's no longer in your outbox, and I think we can --

13 MS. BLOCK: I will, Your Honor.

14 MS. SCHWARTZ: Your Honor, FYI, you know, the U.S.
15 Trustee's Office doesn't have access to that Wi-Fi at Bowling
16 Green.

17 THE COURT: Well, as you can see, sometimes we don't
18 either.

19 MS. SCHWARTZ: I know. The only suggestion I would
20 make for someone in the courtroom is to have someone at your
21 office just email it to me. This way you don't have to deal
22 with the Wi-Fi situation that we could get going.

23 THE COURT: Yeah. That's not a -- that's a good
24 circuitous but no productive belt and suspenders way to deal
25 with this. So all right. Yeah. No. And in fact, it's -- the

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1 Wi-Fi can be a bit a bit of an issue. Zoom is handled
2 separately. We don't rely on the Wi-Fi for Zoom.

3 So all right. So, well, here's what I'm going to do.
4 I'm going to ask you to send it. Have somebody in your office
5 send it. Have a friend send it, whatever's necessary. And one
6 of those will go through. And again, I will make sure to take
7 a break at some point just to make sure everybody's had a
8 chance to get it, to look at it, and to respond to anything.

9 But I think since your intention no doubt is to walk
10 through --

11 MS. SCHWARTZ: I have it now, Judge.

12 THE COURT: Okay. Fantastic. All right, so with
13 that, proceed, counsel.

14 MS. BLOCK: All right. Thank you, Your Honor.

15 On May 28th, the committee filed its motion for entry
16 of an order directing the immediate appointment of a trustee
17 pursuant to 11 U.S.C. Section 1104. The motion is at docket
18 number 233. The filing of this motion was preceded by a host
19 of steps that the committee took to avoid being where we are
20 today.

21 We asked the debtor to agree to a date by when he and
22 his businesses would complete document production pursuant to
23 this Court's bankruptcy Rule 2004 order. He agreed to May
24 24th, and then provided an initial production of just fifteen
25 documents, totaling less than 500 pages and nothing more. His

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1 wholly owned businesses did not produce a single document. We
2 asked the debtor to file timely, complete, and accurate monthly
3 operating reports. He continues to file reports that are so
4 full of errors as to be of, at best, questionable value.

5 We asked the debtor for information about his Amazon
6 and Apple purchases, sometimes more than sixty transactions in
7 a single month. His counsel told the Court such information
8 was already provided but later backtracked and said he spoke
9 prematurely. The committee is still waiting.

10 We asked the debtor to agree to a reasonable budget.
11 He declined to engage, never meaningfully responding.

12 We asked the debtor for information about his
13 compensation, to which he cites in his own pleadings. His
14 counsel sent a letter saying that all compensation is being
15 funneled to his nondebtor business, at one point during the
16 bankruptcy case more than 30,000 dollars each month. He gets
17 no salary from that business. And instead his salary is used
18 to pay that business expenses, which were less than 70,000
19 dollars in 2023.

20 THE COURT: So counsel, let me interject to ask you a
21 question and sort of make a comment that might be helpful going
22 forward. Again, these sort of motions are sort of on a time
23 continuum, right, things you may complain of and you may get
24 some responses but not get other responses. So it would be
25 helpful for me as you go through to identify the state of --

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1 the current state of play, right? I know there was a letter
2 about that, and I know the reply is a fairly recent and vintage
3 timewise. But so when you say his wholly owned businesses not
4 produced a single document, I just want to make sure if you're
5 talking about at the time you filed a motion or currently or
6 both.

7 MS. BLOCK: Both, Your Honor.

8 THE COURT: All right. Thank you.

9 MS. BLOCK: We asked the debtor to sell his Florida
10 condo and comply with his fiduciary duties to creditors. He
11 refused and instead argued that he should be applauded for
12 using exempt assets in furtherance of his own self-interest and
13 his mistaken belief that he can keep ownership of the Florida
14 condo when the bankruptcy case concludes.

15 THE COURT: All right. Again, I apologize for hopping
16 around, but just to make sure I think about these things.
17 There is a motion that was filed. That motion is pending.
18 It's sub judice. And so what's your view about how that motion
19 relates to this motion, is do you view as one being more
20 appropriate? If I grant this motion, does that motion cease to
21 be an issue? If I grant that motion, does this motion -- does
22 it change the status on this motion? If I deny that motion,
23 where does it leave the committee? I'm just interested in how
24 you view things holistically speaking.

25 MS. BLOCK: We think this motion is paramount. This

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1 one is the most important because if a trustee comes in,
2 they'll look at this asset, it's not exempt, and they'll sell
3 it. They'll use their business judgment. If that motion were
4 to be granted, we still think a trustee is appointed for all
5 the reasons we've set forth in our papers. So key is this
6 motion. And we think this condo needs to be sold.

7 THE COURT: All right. Thank you.

8 MS. BLOCK: Thank you. We asked the debtor to
9 facilitate the return of unauthorized payments to his
10 businesses, their employees, and his reported girlfriend. He
11 refused and concocted a story that he was reimbursing them for
12 expenses paid on his behalf, expenses like his business's
13 employees' plane tickets. But then he pivoted and said it's
14 okay that he made unauthorized payments because he reimbursed
15 the estate with exempt funds used to pay expenses that align
16 completely with his own self-interest.

17 So, Your Honor, unfortunately, the debtor has made
18 today an inevitability. And the committee is here requesting
19 the immediate appointment of a Chapter 11 trustee.

20 THE COURT: All right. Let me ask you about the
21 payment of various individuals on the question of verification.
22 What do you know or not know based on what's been shared and
23 not shared as to the source of funds? There's a fight about
24 what would be appropriate and what would not be appropriate,
25 depending on what funds are used or not used. But what does

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1 the committee know or what information does it lack to be able
2 to categorically understand where the funds came from and the
3 flow of things, particularly as to the payment of the
4 individuals associated with his entities?

5 MS. BLOCK: Your Honor, we don't really have any
6 records from the businesses. We just have the credit card
7 statements that are attached to the monthly operating reports.
8 And they don't tick and tie. They don't show exactly where the
9 funds are coming from. They just show that the debtor reports
10 paying the businesses and their employees' credit cards during
11 various months throughout the cases.

12 THE COURT: All right. So essentially you just have
13 the out. You have where the money is going, that is from the
14 debtor based on the credit card to these individuals. You
15 don't know the in as to where that funds are. So I'm assuming
16 that means it's not reflected in your view in the monthly
17 operating report in a way that can be identified?

18 MS. BLOCK: That's right, Your Honor. There is one
19 IRA withdrawal or payment in the December report. But money is
20 fungible, so it's hard to know what's going where and what's
21 paying what.

22 THE COURT: All right. And what was the size of that?

23 MS. BLOCK: 100,000 dollars.

24 THE COURT: All right. And what ballpark is the
25 aggregate amount of the payment to these individuals or for

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1 other expenses that have been identified in the committee's
2 view as coming from exempt assets? In other words, that I
3 understand is the exempt asset. Right? And what's your
4 understanding is the universe of things, or do you not know?

5 MS. BLOCK: You know, Your Honor, we don't know. And
6 that's in particular because of the way his earnings are being
7 funneled to the wholly owned business. So it's unclear how
8 much of that estate asset is going to pay the business's
9 expenses because we don't know the in there. We do know that
10 he's reported paying tens of thousands of dollars for his
11 business and Ms. Ryan in his monthly operating reports, but
12 that's not the whole universe.

13 THE COURT: All right.

14 MS. BLOCK: Your Honor, Bankruptcy Code Section
15 1104(a) provides two separate paths for the appointment of a
16 trustee: first, a finding of cause under Section 1104(a)(1),
17 and second, a finding that the appointment of a trustee is in
18 the interest of the debtor's estate and creditors under Section
19 1104(a)(2). An analysis of the facts and standard
20 circumstances here, as applied to each standard, leads to the
21 same place. A Chapter 11 trustee must be appointed.

22 Your Honor, I plan to address both standards and will
23 start with Section 1104(a)(1). Upon a showing of cause under
24 1104(a)(1), a Bankruptcy Court is required to appoint a Chapter
25 eleven Trustee. The list of wrongdoings constituting cause

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1 fell on the section is not exhaustive. And in determining
2 whether cause exists, a Bankruptcy Court can consider a
3 debtor's pre-petition and post-petition conduct.

4 Here, the facts compel the appointment of a Trustee
5 for cause, including dishonesty, incompetence, gross
6 mismanagement of the debtor's affairs, inadequate record-
7 keeping and reporting, inappropriate relations between the
8 debtor and his wholly owned businesses, conflicts of interest,
9 and breaches of fiduciary duty. I will take each in turn.

10 Dishonesty constituting cause under Section 1104(a)(1)
11 can come in many forms. And particularly applicable here,
12 cause is found where a debtor omits financial data without
13 justification and required financial disclosures. The debtor
14 has treated this bankruptcy case like a personal game of
15 hide-and-seek. He files inaccurate and incomplete financial
16 disclosures. The committee learns that information the debtor
17 failed to report and request such information. Debtor denies
18 the information, ignores the committee's request, or otherwise
19 does not provide the time -- provide timely the information.
20 The committee continues asking questions. And the debtor
21 concedes he's been found and provides some information which
22 just leads to more questions. And this game for the debtor
23 started on day 1.

24 In a schedule G filed with the petition, the debtor
25 listed no contracts. The committee learned from press

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1 reporting and social media that the debtor was releasing an
2 upcoming book. The committee asked whether the debtor had a
3 contract for this book. The debtor denied having a contract.
4 The committee continued asking questions. The debtor finally
5 provided a partially executed contract for the book. He
6 allegedly does not have a fully executed version in his
7 records.

8 And the committee was forced to participate in a
9 similar game with respect to the debtor's latest business
10 venture, Rudy Coffee. The debtors own counsel, and the
11 committee learned of Rudy Coffee from press reporting and
12 social media which led for the committee to ask questions and
13 specifically about the compensation arrangement. Ultimately,
14 the committee received a copy of a contract dated April of this
15 year signed by the debtor not as an authorized signatory of any
16 company. He just signed it with his name and no specific
17 designation. And it showed all money being routed to Giuliani
18 Communications, not the debtor.

19 This seems to be a common theme for the debtor. He
20 does the work, and his company gets all of his earnings, which
21 means that money, an estate asset, is not coming into the
22 estate.

23 THE COURT: So let me ask you for -- and this is a
24 recurring theme in your papers for your sort of say best case
25 authority in terms of looking at a debtor's company where a

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1 debtor uses that company to funnel -- or essentially to do
2 business. I don't even -- I'm not trying to use a pejorative
3 adjective, but just if essentially that's how the debtor
4 decides to conduct business, that is then squarely in the
5 crosshairs for the transparency obligations of the Bankruptcy
6 Code. Do you have anything in particular, case authority or --
7 whether it's code sections or cases that you think are helpful?
8 I think you cited some things in connection with -- I'm trying
9 to remember the context. But it was -- it was a bit off to the
10 side in terms of authority. So I was just trying to ask if you
11 had -- what you would urge me to consider in context of this
12 question.

13 MS. BLOCK: Yeah. I think In re Sillerman (ph.)
14 provides good case authority that debtor was an individual
15 debtor that also owned interest in many different companies and
16 was using those companies and moving assets and using a joint
17 account with his wife to do the same thing. We also have
18 Nacore Hill Publishing, Inc. (ph.) And that case involved a
19 company where the company debtor paid for its affiliates'
20 office spaces and various other affiliates' expenses without
21 any authority.

22 THE COURT: All right. So let me ask, because I
23 haven't gotten a chance to read these cases although I will, is
24 what the court says -- is there any particular takeaway or line
25 in terms of how the court considers those questions, the issues

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1 you've just identified?

2 MS. BLOCK: They look at a lot about conflicts of
3 interest and how debtors are using affiliates in a way that
4 benefit that particular debtor and keeping assets outside of
5 the estate. They talk particularly about the debtor's
6 unwillingness to pursue claims against those affiliates, given
7 his own self-interest and interest in those affiliates. So a
8 lot of common themes that we have here.

9 THE COURT: All right. Thank you.

10 Well, actually back up for one second. And I think
11 that is how it's identified in your papers in terms of conflict
12 of interest. So thank you for the harmonic.

13 I guess my question is, are there cases that just talk
14 about it that you're aware of that talk about it in the context
15 of transparency writ large, meaning that when you file for
16 bankruptcy, you get certain benefits, you take on certain
17 obligations, the primary obligations the financial
18 transparency? And in terms of if you choose to organize your
19 business affairs a particular way, then essentially you take on
20 that obligation as to transparency as to those businesses.

21 So I'm not -- and that's the thing. I'm not sure I
22 necessarily saw parties directly talking about case law in that
23 area. And it may be because it's harder to find. But I
24 appreciate your guidance and wisdom on that.

25 MS. BLOCK: Yeah. I think also In re Sillerman is

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1 helpful. There are some issues with respect to the 2015.3
2 reports and the monthly operating reports being deficient, not
3 identifying interest in affiliates. So again, there are common
4 themes. Facts are a little bit different, but again, common
5 themes.

6 THE COURT: All right. Thank you.

7 MS. BLOCK: Another common theme for the debtor is
8 filing inaccurate and misleading financial disclosures and,
9 with full knowledge of the inaccuracies and misleading
10 information, doing nothing to update it. For example, the
11 debtor ignores the instructions for schedule AB which requires
12 that he separately list individual items worth more than 500
13 dollars and instead lumps his jewelry together and assigns a
14 total value of just 30,000 dollars for a long list of pieces,
15 including, among others, three Yankee World Series rings, a
16 Rolex, six unnamed watches, and a Tiffany watch.

17 Moreover, even the perception of a debtor's conduct is
18 dishonest is an independent ground for the appointment of a
19 trustee. And the committee has made no secret of its view that
20 it perceives the debtor's conduct throughout this bankruptcy
21 case as dishonest.

22 First, the debtor has provided conflicting testimony
23 regarding a court-ordered requirement, or lack thereof, to pay
24 certain expenses for his former mother-in-law. At the 341
25 meeting, a court ordered him to make such payments. Later

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1 during his deposition, he took that obligation on and maybe the
2 court would have ordered it. As is --

3 THE COURT: So as to that, I understand the point in
4 your papers is as to disclosure primarily. Is there any point
5 as to substance or the appropriateness of that payment? I
6 didn't see it. I thought it was in connection with the
7 disclosure point.

8 MS. BLOCK: That's exactly right, Your Honor.

9 THE COURT: All right.

10 MS. BLOCK: Second, at the 341 meeting, the debtor
11 provided testimony about his membership in social clubs and did
12 not identify the Palm Beach Yacht Club. But months later, a
13 check to the Palm Beach Yacht Club appeared on his April
14 operating report. Again, Your Honor, this is not an argument
15 about the merit of the payment or whether it was authorized or
16 not. It's another example of the debtor providing sworn
17 testimony that conflicts with his filings made under penalty of
18 perjury. An honest debtor would have updated his schedules.
19 This debtor did not.

20 Third, the debtor claims that thousands of dollars of
21 payments made on behalf -- made by him on account of Maria
22 Ryan's credit card bill and Giuliani Partners credit card bill
23 are merely reimbursements of expenses paid on his behalf. But
24 it's almost impossible to view that explanation for repeated
25 unauthorized payments as anything other than dishonest. Why

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1 would the debtor ever be responsible for reimbursing his
2 businesses for the cost of plane tickets for his businesses'
3 employees?

4 THE COURT: So let me ask you a specific question
5 about this. I understood that the focus of the financial sort
6 of untying the Gordian knot was between the debtor and Giuliani
7 Communications as the primary entity and that the understanding
8 the committee had based on what the debtor had said is that all
9 the money gets -- for these businesses gets funneled through
10 Giuliani Communications and that the excess goes to Mr.
11 Giuliani if there -- if there is money that is excess.

12 So a couple of follow-up questions. I see we're
13 talking about Giuliani Partners here. And I'm wondering what
14 your understanding is as to that particular entity. Just given
15 that, I think most of the conversation has been about Giuliani
16 Communications.

17 MS. BLOCK: Yeah. Your Honor, in his deposition, he
18 described that one as essentially dormant. But then he
19 attaches credit card statements from Giuliani Partners as
20 supporting documentation for his monthly operating reports. So
21 it seems there's some spending going on some level of business
22 activity, but we don't have any further visibility into what's
23 actually happening at that entity.

24 THE COURT: All right. Had it been identified to the
25 committee or other parties-in-interest as a business entity

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1 through which the debtor was continuing to do business or --
2 again, my very loose understanding based on sort of looking at
3 the tip of the iceberg above the waterline is that we were
4 talking about Giuliani Communications as opposed to some other
5 entity. But again, I know you all are much more in the weeds.
6 So did you have -- was this the first instance in which
7 Giuliani Partners was identified, or was it identified earlier
8 but in some other way?

9 MS. BLOCK: Your Honor, Giuliani Partners was the only
10 entity we knew about until we got that May compensation letter
11 and the Rudy Coffee contract that listed Giuliani
12 Communications. We had thought that business was going through
13 Giuliani Partners because those were the monthly operating
14 reports supporting documentation. So we only learned about the
15 compensation arrangement with everything going to Giuliani
16 Communications pursuant to that, I believe, May letter.

17 THE COURT: All right. Thank you very much. And so
18 from what I understand, the committee's position is when you're
19 talking about these expenses, the theory -- and I'm going to
20 state what I think I understand your position being, and you're
21 going to straighten me out if I have it incorrect. Is it that
22 if the income and the businesses are being run through, say,
23 Giuliani Communications as pursuant to the May letter and all
24 the income goes there, do I understand the committee's position
25 correctly to be that if expenses are being paid, that they

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1 should come out of Giuliani Communications because that's where
2 the income is coming as opposed to it coming from the debtor
3 directly?

4 MS. BLOCK: That's right. But we think by using the
5 income, it actually is coming directly from the debtor because
6 he should be getting a salary or earnings. Those are property
7 of the estate. And so he can't use that income, those
8 earnings, 1115 saying those are post-petition earnings to fund
9 a nondebtor wholly owned affiliate's expenses.

10 THE COURT: All right. But I guess as a theoretical
11 matter, isn't it possible that if the business is set up where
12 the money does go there to some entity, Corporation, A that if
13 the income goes there, the expenses come out of there and then
14 the principal is paid whatever is profit or whatever or salary
15 or whatever it is but that you can do it that way but that the
16 income and the expenses are dealt with at the entity level as
17 opposed to the individual short of making a capital
18 contribution is sort of separate and apart from that I just
19 want to sort of understand the theory here.

20 MS. BLOCK: Yeah. There's sort of those two separate
21 theories that he shouldn't directly from his estate be paying
22 expensive. And then the theory that if he's actually an
23 employee of Giuliani Communications, his salary, his income,
24 the work he gets, his earnings shouldn't be used to pay that
25 business expenses.

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1 THE COURT: All right.

2 MS. BLOCK: Your Honor, simply the debtor's
3 dishonesty, along with the creditors perception that the debtor
4 is dishonest, constitute cause requiring the appointment of a
5 trustee.

6 THE COURT: So before we get off this particular
7 point, I think you're getting ready to segue to another point,
8 what, if anything, do you want me to take -- as I see it's in
9 in in your papers and repeated again the slides talking about
10 how you can consider post-petition conduct but also pre-
11 petition conduct. What, if anything, do you want me to take
12 from the history and before the filing on this -- as to your
13 motion? And maybe the answer is nothing. Maybe the answer is
14 a lot. I don't know. And I want to make sure I understand.

15 MS. BLOCK: Your Honor, I think it comes back to the
16 Freeman litigation and how we dealt dishonestly in the
17 litigation there with respect to his discovery obligations and
18 complying with court orders. And so the dishonest conduct has
19 bled into here with his not complying with court orders, not
20 honestly fulfilling his duties as a debtor-in-possession.

21 THE COURT: All right.

22 MS. STRICKLAND: Next up is incompetence, gross
23 mismanagement, and inadequate record-keeping and reporting
24 constituting cause requiring an appointment of a trustee.

25 Since the petition date, the debtor has engaged in a

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1 course of conduct that can only be described as incompetence
2 and gross mismanagement of affairs which conduct is amplified
3 by his wholly inadequate record-keeping and reporting.

4 Throughout the case, we have discussed that the
5 reorganization process depends upon the free flow of accurate
6 information from the debtor. But where debtor's financial
7 disclosures raised significant questions or debtor fails to
8 maintain complete and accurate financial records, such
9 constitutes gross mismanagement for which a trustee must be
10 appointed. And that is precisely with what we're dealing with
11 here.

12 In two separate stipulations, the debtor has admitted
13 that his schedules of assets and liabilities and statement of
14 financial affairs require further amendments and disclosures.
15 The first of the two stipulations was filed on March 5th. Yet
16 more than three months later, debtor has not filed any further
17 amendments to his schedules or statement.

18 Similarly, at the 341 meeting back on February 7th,
19 the debtor agreed to make a number of amendments to his
20 schedules and statement. Without explanation, we are still
21 waiting for those amendments four months later.

22 Moreover, the debtor's filings in this case are
23 consistently inaccurate, conflict with previous disclosures,
24 and generally lack supporting documentation.

25 THE COURT: Have you in the capacity as a committee

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1 been given any visibility into what further amendments are
2 discussed at those two points in the docket that you identify?

3 MS. BLOCK: So we have a list of amendments that we
4 include in our paper with respect to things he agreed to do
5 after the 341 meeting, but we haven't been privy to any
6 discussions of the status of where that stands.

7 THE COURT: All right. So safe to assume that you
8 know what you've been told as to amendments that may occur, but
9 you don't know if they're the whole universe of amendments as
10 are referenced in these pleadings?

11 MS. BLOCK: That's right, Your Honor.

12 Given the debtors limited self-reported assets as
13 compared to his liabilities, it's particularly important that a
14 schedule of assets is correct. But it's not. In schedule AB,
15 he lists three entities that he owns one hundred percent of:
16 Giuliani Communications, LLC. Giuliani & Company, LLC and
17 World Capital Payroll Corp. Contrast that with his bankruptcy
18 Rule 2015.3 report, he adds three more entities that he lists
19 as owning a hundred percent of which are not listed in his
20 schedule.

21 The debtor's lack of knowledge concerning his own
22 assets is highlighted by his deposition testimony where he
23 displayed very little knowledge about the entities he reports
24 to own a hundred percent of, saying I'm embarrassed to tell
25 you, I'm not sure I know what the heck it is, in reference to

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1 Giuliani Group, LLC. With respect to Giuliani & Company, LLC,
2 he said I couldn't tell you for the life of me how it relates.
3 Your Honor, his limited knowledge of his own assets is
4 concerning.

5 Additionally, on numerous occasions, in pleadings and
6 at hearings, the committee has expressed concerns about the
7 debtor's monthly operating reports. Other than one monthly
8 operating report, which was still filed after a self-proclaimed
9 filing deadline, debtor has filed every monthly operating
10 report after the filing deadline. One would think that the
11 debtor would use that extra time to get the numbers right, but
12 one would be wrong as every monthly operating report has
13 inexplicable errors and omissions. The December and January
14 operating reports include no supporting documentation. The
15 February operating report includes February 2023 bank
16 statements as supporting documentation. Not one operating
17 report's end-of-month cash balance matches the beginning of
18 month cash balance listed in the following month's operating
19 report.

20 The debtor's monthly operating reports reflect
21 incompetence and a lack of respect for its obligations as a
22 debtor-in-possession and a beneficiary of the bankruptcy
23 process. Moreover and equally egregious, and is flagged
24 throughout this presentation, the monthly operating reports for
25 January, February, and March show obvious unauthorized

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1 payments. Yet incredibly he answers no to the questions were
2 any payments made outside the ordinary course of business
3 without court approval, and were any payments made to or on
4 behalf of insiders.

5 Finally, other than the December operating report
6 which covers an eight-day period and includes 100,000
7 withdrawal from the debtor's IRA every month, the operating
8 report shows a total expenses exceed total income for the
9 applicable month. Simply the debtor's continued failure to
10 amend his schedules and statements to accurately reflect his
11 assets and liabilities, his inability to file timely, complete,
12 and accurate monthly operating reports, his regular
13 unauthorized payments for the benefit of nondebtor insiders,
14 and the fact that his expenses are reported as exceeding total
15 income for every month except December showcase his
16 incompetence, gross mismanagement, and inadequate reporting
17 which require the appointment of a Chapter 11 Trustee.

18 Next, Your Honor, the temptation for self-dealing has
19 proven to be too much for the debtor and has led to incurable
20 conflicts of interest and inappropriate dealings with his
21 wholly owned businesses which required the appointment of a
22 trustee. Generally, this temptation for self-dealing is
23 heightened in an individual debtor's bankruptcy case where the
24 debtor's natural instinct is to protect his own self-interest.
25 And such a scenario demands full transparency.

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1 Moreover, a conflict of interest constituting cause
2 occurs where debtor has inappropriate dealings with an entity
3 in which the debtor owns an interest. That is precisely here
4 what we have as a debtor directs all of his income earning
5 opportunities and compensation to his Nondebtor wholly owned
6 business and uses his earnings to pay his wholly owned
7 businesses' expenses.

8 In filings by the debtor on March 28th and then again
9 on May 7th, he said that he currently receives Social Security
10 benefits and broadcasts a radio show and podcast which are his
11 sole sources of income. However, the debtor has never reported
12 any compensation, wages, or salary in his monthly operating
13 reports. The debtor's failure to so report conflicts with news
14 reports that the debtor said he earned 15,000 dollars a month,
15 which he referred to as peanuts, from his WABC show before it
16 was canceled in May. And the debtor earns 100,000 -- between
17 100,000 and 150,000 from Newsmax for a show America's Mayor
18 Live.

19 And following questions from the committee and with
20 Your Honor's assistance, the debtor's counsel at the May 14th
21 hearing agreed to provide the committee information about the
22 debtors compensation. On May 22nd, the committee received a
23 letter from the debtor's counsel with information that was
24 disturbing with respect to the debtor's now canceled WABC radio
25 show, there was no formal contract governing the relationship,

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1 but the debtor earned approximately 14,000 dollars per month.
2 However, that amount was paid to Giuliani Communications. The
3 debtor's counsel did not provide an explanation as to why the
4 monthly payments were made to that business and not the debtor.
5 And the same arrangement is in place with respect to debtor's
6 live stream, where the income comes primarily from tunnels to
7 tower, tunnel to towers, averages over 16,000 dollars per
8 month, and again is paid to Giuliani Communications.

9 And then the letter talks about Rudy Coffee. And by
10 this point, it's obvious where we're all going. The letter
11 purports to have entered into a post-petition contract
12 requiring Rudolph Giuliani to promote Rudy Coffee, but all
13 payments are going directly to Giuliani Communications.

14 What this letter tells us is that despite more than
15 tens of thousands of dollars coming into Giuliani
16 Communications each month as a result of the debtor's work, he
17 has allegedly not received any compensation from Giuliani
18 Communications because the income is used to pay expenses of
19 that company, and that's how he's always done it. That
20 explanation is generally hard to believe but also does not
21 align with the only reporting that the debtor has provided on
22 Giuliani Communications, one Bankruptcy Rule 2015.3 report
23 showing less than 70,000 dollars of expenses for Giuliani
24 Communications in all of 2023.

25 So the debtor says he's working for free and all of

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1 his income, an estate asset, is being directed to his business,
2 a nondebtor insider instead of his creditors. And since he
3 refuses to comply with the Rule 2004 order, we have no records
4 for Giuliani Communications or any of his other wholly owned
5 businesses. The debtor's arrangement of siphoning his income
6 to businesses attempting to put such funds outside the reach of
7 creditors cannot continue.

8 In addition to directing all of his income to his
9 business, the debtor has shown himself incapable of operating
10 his business in a way that does not divert his personal funds
11 to his business. Just listen to the debtor's own words at the
12 341 meeting. Overview of all the expenses. "Until now, I paid
13 a lot of business expenses, always have because they're my
14 businesses. I pay them out of my personal account. And I'm
15 really not good about getting reimbursement for them because
16 they were my businesses." And despite the debtor's sworn
17 testimony that he is not now -- that this is not how he
18 operates now, his monthly operating reports say otherwise.

19 Throughout the bankruptcy case, the debtor continues
20 to pay Giuliani Partners credit card bills and attaches the
21 business's credit card statements as supporting documentation.
22 Moreover, given that the monthly operating reports are
23 generally inaccurate and incomplete, the committee has no
24 reason to believe that he has not made other unauthorized
25 payments for his businesses and their employees. The debtor's

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1 April operating report shows a number of payments to B&H Photo,
2 a store for photographers, musicians and creative professionals
3 with leading edge technology that one might use for say, a live
4 stream, radio show, or podcast.

5 It's crystal clear that the conflicts of interest
6 presented in this bankruptcy case are overwhelming the debtor.
7 And he has shown no restraint when it comes to choosing between
8 his own self-interest and that of his creditors. He chooses
9 himself every time and diverts and will continue to divert
10 funds and opportunities for income away from his creditors and
11 directly to his wholly owned businesses and close associates.

12 Your Honor, next is the debtor's failure to satisfy
13 his fiduciary duties as a debtor-in-possession. We focus on
14 three specific fiduciary duties the debtor has failed to
15 observe: the duty to protect and conserve estate property, the
16 duty to refrain from acting in a manner that could damage the
17 estate, and the duty to refrain from acting in a manner that
18 could hinder reorganization.

19 First, the duty to protect and conserve estate assets,
20 which includes a duty to conduct impartial investigations and
21 determine whether to pursue claims on behalf of the estate. As
22 previously discussed, the debtor is not willing to undertake
23 any sort of investigation or take any action at all with
24 respect to the unauthorized payments on behalf of his business
25 and Maria Ryan.

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1 Moreover, observance of this fiduciary duty also means
2 that the debtor cannot dispense with assets outside of the
3 ordinary course without approval. Yet the debtor is not sought
4 or obtained any approval from this Court to pay Maria Ryan's
5 credit card bill or the credit card bills of his business.

6 Second, the fiduciary duty to refrain from acting in a
7 manner that could damage the estate, a duty to which a debtor
8 is taken aback. Debtor has chosen time and time again to
9 engage in value-destructive behavior that could lead to the
10 occurrence of additional and unnecessary administrative
11 expenses and make meaningful recoveries for unsecured creditors
12 an even more remote possibility. The specific behavior the
13 debtor can't seem to help but engage in is the same that led to
14 the 148-million-dollar judgment against him and led to the
15 debtor commencing this case.

16 For reasons that are impossible to understand,
17 following the petition date, the debtor continued to make the
18 same defamatory statements about the Freeman plaintiffs, the --

19 THE COURT: So let me ask you about that. Obviously,
20 that issue came in front of me. There was an adversary
21 proceeding. There was a motion. Ultimately, there was a
22 stipulation. Of course, the appointment of a trustee doesn't
23 necessarily prevent that kind of conduct. So what is it I'm
24 supposed to take from that instance, right, in terms of your
25 current motion? Like, how am I supposed to consider it?

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1 Because it's -- unlike the conserving estate property, the
2 notion is, well, the trustee is going to come in and marshal
3 assets and do things of that sort. This seems to be a little
4 different in kind. So what is the case law or what do the
5 facts here tell me about this issue about refraining in a way
6 in a manner that could damage the estate?

7 MS. BLOCK: If a trustee comes in, he could take over
8 the management of the wholly owned businesses and remove that
9 platform to make these statements that reach thousands and
10 thousands of people which would go to some of the unnecessary
11 administrative expenses. But you're right, Your Honor. The
12 trustee can't stop the debtor from tweeting.

13 THE COURT: But I to understand that this point --
14 well, I'm assuming, but again, you can straighten me out if
15 I've got this wrong, that for purposes of the committee's
16 argument, the fact that a trustee can't prevent the conduct
17 that you identify in this second prong of fiduciary duty
18 doesn't mean it isn't relevant. It's still relevant because
19 it's relevant for considering the breaches of fiduciary duty
20 because it's a breach.

21 MS. BLOCK: It's a breach. And it also goes, I would
22 say, to gross mismanagement.

23 THE COURT: All right.

24 MS. BLOCK: Thank you, Your Honor.

25 The consequences of his reckless and cruel behavior

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1 are borne by his unsecured creditors letters. The debtor's
2 WABC radio show, one of his only reported sources of income,
3 was canceled. Estate resources were expended getting the
4 debtor to stop talking. There was an emergency adversary
5 proceeding. And ultimately an injunction entered. And the
6 Freeman plaintiffs did in fact file administrative expense
7 claims.

8 But the behavior doesn't stop there. Debtor has taken
9 no serious steps to rein in his own spending or reduce the
10 costs associated with his lifestyle. His January operating
11 report, to the extent it is even accurate, includes credit card
12 payments over 26,000 dollars, including an account of at least
13 sixty Amazon transactions. Fast-forward three months and not
14 much has changed. In April, the debtor reports paying 21,000
15 dollars in fees for his New York City apartment. And the
16 committee received a partial copy -- a copy of a partial May
17 2024 bank statement, which shows the debtor paid nearly 16,000
18 dollars in fees for his Florida condo, a nonexempt asset that
19 he refuses to sell.

20 THE COURT: So I know we heard argument on the motion
21 a while back. I took it under advisement. But remind me of
22 the following. I remember the argument being in that
23 particular instance with the Florida condo being -- the
24 debtor's argument was that he needed a place to live and that
25 that's where he was going to live. I don't remember, and I

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1 wanted to confirm in the context of that argument, that there
2 wasn't any argument about asset being in fact exempt. I think
3 the committee had said it's not exempt or -- again, I forget
4 which party said it. But am I remembering that correctly that
5 there is no argument made that it was an exempt asset?

6 MS. BLOCK: You're right. I think there's no argument
7 made that it is a nonexempt asset. But there has been
8 discussion that the debtor wants to live there after the
9 bankruptcy case.

10 THE COURT: Right. Yep. That's how I remember the
11 state of play. All right. Thank you.

12 MS. BLOCK: Simply, the debtor is not a responsible
13 steward of his assets.

14 Third, the debtor is undoubtedly violated, his
15 fiduciary duty to refrain from acting in a manner that could
16 hinder a reorganization by, among other things, acting in a
17 manner that could lead to the incurrence of unnecessary
18 administrative expenses, funneling income to his wholly owned
19 businesses, unrestricted spending for his own benefit for his
20 businesses and his closest associates, and refusing to sell the
21 Florida condo, instead paying tens of thousands of dollars to
22 maintain it.

23 Simply through the continued bad behavior, the debtor
24 can no longer keep the privilege of being a debtor-in-
25 possession. And his breaches of fiduciary duties that all

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1 debtors-in-possession must observe constitutes cause requiring
2 appointment.

3 Your Honor, that covers the debtor's dishonesty,
4 incompetence, gross mismanagement, inadequate record keeping
5 and reporting, inappropriate relations with his businesses,
6 conflicts of interest, and breaches of fiduciary duty, each of
7 which constitutes cause requiring the appointment of a trustee.

8 THE COURT: But so for purposes of the other argument,
9 I know that you have about being in the best interest of
10 creditors and the estate, there's obviously a certain amount of
11 repetition here in terms of the facts fitting into the test in
12 a different way. So I think I understand where you're coming
13 from for that. So I think we can probably dispense with going
14 through that.

15 What I would say for that, is there any particular
16 point that you think is important for me to understand from the
17 committee's point of view that merits discussion?

18 MS. BLOCK: One point that we hit that I think should
19 be highlighted is with respect to the debtor's pre-petition
20 misconduct that's continuing during the bankruptcy case, and
21 that's the willful shirking of his discovery obligations. His
22 businesses have not produced one document and he produced just
23 fifteen documents totaling 500 pages. And that's in line with
24 his behavior in the Freeman litigation and the shirking of
25 discovery obligations there.

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1 THE COURT: And that's the second of the of the
2 1104(a)(2), the past and present performance. Is that right?

3 MS. BLOCK: That actually went to the creditor
4 distrustworthy (sic).

5 THE COURT: All right. I guess the fact is what it
6 is. And --

7 MS. BLOCK: Yes.

8 THE COURT: And beauty's in the eye of the beholder as
9 to exactly where it might fit. All right.

10 MS. BLOCK: Your Honor, if I just may have a second to
11 make sure I don't have any other highlights to hit that would
12 be different.

13 THE COURT: Sure.

14 MS. BLOCK: The one other point I'd like to note is
15 with respect to past and present performance. And it's just
16 highlighting again that he's made virtually no progress in the
17 Chapter 11 case. And any progress has come as a result of the
18 committee and other parties acting reasonably and agreeing to
19 relief.

20 THE COURT: All right. So I think that would get us
21 to all the way to page 25 of 29 where you address the debtor's
22 opposition. I'll give you the option, the old game show
23 password, to pass or play, whether you want to do that now or
24 whether you want me to hear from the debtor first and then
25 respond. It's up to you.

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1 MS. BLOCK: Your Honor, can I proceed now?

2 THE COURT: All right.

3 MS. BLOCK: Thank you.

4 Your Honor, the debtor filed his opposition on June
5 13th at docket number 256. As set forth in the committee's
6 reply, we were shocked by what we read. The opposition is
7 replete with statements against interest and facts that
8 actually support granting the motion. Among them, the debtor
9 talks about Giuliani Communications as his alter ego. The
10 letter admits to struggling with the administrative aspects of
11 Chapter 11. Debtor admits to administrative deficiencies and
12 concedes his need to improve adherence to the administrative
13 guidelines. The debtor describes how he funnels his income to
14 his nondebtor wholly owned company and uses that income to pay
15 that company's expenses. The debtor concedes his compliance
16 with the operating guidelines is not up to par. And the debtor
17 asks us to be rewarded for him -- the debtor asked to be
18 rewarded for reporting fewer unauthorized payments in March
19 than he did in January.

20 It's hard to know exactly what to make of the
21 opposition, and it covers a range of topics, some relevant,
22 some not. But I will address these in turn.

23 First, the debtor focuses on fraud, an 1104(a)(1)
24 cause that the committee does not allege in the motion.

25 Second, the debtor tells a false and misleading

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1 narrative that I'd frame as a work of fiction whereby he
2 completely omits his and his businesses' failure to comply with
3 this court's bankruptcy Rule 2004 order and says he has always
4 been fully transparent and open about his finances. Again,
5 Your Honor, he produced just fifteen documents that total less
6 than 500 pages in response to the committee's subpoena. The
7 businesses, well, they've produced nothing.

8 Third, he identifies another conflict of interest,
9 using his income, an estate asset, to pay the salary of the
10 debtor's reported girlfriend's daughter.

11 Fourth, he asked his court to applaud his use of
12 exempt funds for his personal benefit for things like upkeep on
13 his nonexempt Florida condo the committee has asked him to sell
14 for months.

15 Fifth, he continues to obsess on an appeal of the
16 Freeman judgment, attaching a preliminary appellate brief to
17 his opposition which is irrelevant to the issue of whether a
18 trustee should be appointed. The debtor has completely lost
19 sight of how to make his bankruptcy case successful and to get
20 progress and continues to ignore the court-related guidance
21 that lifting the automatic stay to pursue an appeal at this
22 time is an impediment to progress in the bankruptcy case. We
23 just went through this exercise. The debtor lost. His stay
24 relief motion was denied. We don't understand why he continues
25 to bring it up.

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1 Sixth, the debtor is not entitled to an evidentiary
2 hearing. He has failed to identify any material issues of
3 disputed fact. And the debtor has not disputed any of the core
4 facts. It's an attempt to delay the inevitable.

5 Seventh, the letter refers to Giuliani Communications
6 as its alter ego. This opens the door for reverse veil
7 piercing whereby his creditors could seek to recover from his
8 business. And his description of how his salary is used to pay
9 that business expenses just supports a finding of gross
10 mismanagement, inappropriate relations with Giuliani
11 Communications and breaches of fiduciary duty.

12 Eighth, the debtor ignored the obvious and substantial
13 benefits that would flow from the appointment of a trustee,
14 including among them the fact that the trustee can take control
15 of debtor's books and records, economic and governance rights
16 of the debtor's wholly owned companies, the sale of the debtors
17 New York apartment and Florida condominium, and monetize the
18 debtor's other nonexempt assets, while also pursuing the
19 recipients and are beneficiaries of the debtor's unauthorized
20 payments and facilitating the return of estate assets that have
21 been improperly diverted. Simply, the debtor's opposition is
22 not persuasive.

23 Finally, Your Honor, we've made it to the proposed
24 order section. We are requesting the immediate appointment of
25 a trustee. Given the fact of this case -- we think it's

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1 important that a trustee is appointed sooner rather than later.
2 And the United States Trustee Program Manual supports that
3 request.

4 In connection with the appointment, we are asking the
5 United States Trustee to fulfill the requirements set forth in
6 Section 1104(d) and consult with the committee before such
7 appointment. The order does not prescribe with whom the U.S.
8 Trustee can and cannot consult in any way that's contrary to
9 the Bankruptcy Code. It merely confirms our right as the
10 official committee to be consulted. And again, this is
11 supported by the United States Trustee Program manual.

12 Upon appointment of a trustee, the debtor's
13 exclusivity period should be terminated. He's admitted in the
14 opposition that he is in no position to file a plan, and for
15 all the reasons that a trustee should be appointed, and
16 specifically due to lack of progress --

17 THE COURT: Well, wouldn't that be a -- you'd
18 hamstring the trustee, right? I mean, it's one thing to
19 appoint at the request to appoint a Chapter 7 Trustee where
20 liquidation is the goal. But even if liquidation -- maybe this
21 is a liquidating 11. Even then, doesn't the timing and the way
22 things are done matter whether it's a sale person to a plan,
23 tax advantages, all those kinds of things? So wouldn't it be
24 really infringing on the trustee, any trustee who would be
25 appointed in terms of their ability to exercise appropriate

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1 judgment?

2 MS. BLOCK: In terms of proposing a plan?

3 THE COURT: Well, in terms of the Court may reduce or
4 increase 120-day period for exclusive period. And just again,
5 anything that says here's the substance of where the case is
6 and what should happen, that would seem to be saying, well, not
7 only is the motion granted, but there should be additional
8 relief as to the case baked in that handcuffs any Chapter 11
9 trustee. And maybe the trustee ends up there. Maybe the
10 trustee doesn't end up there. And sometimes it's hard to know
11 if -- my years on the bench have proven anything, it's that
12 it's very hard to predict the future in cases. So I guess
13 that's my point, but I want to make sure I understand your
14 position on that.

15 MS. BLOCK: The position is that we're just needing to
16 terminate the debtor's exclusivity periods. We're fine with
17 the Trustee having some. And we would plan on working
18 cooperatively with the trustee and providing all the
19 information that could be beneficial for a trustee to propose a
20 plan.

21 THE COURT: All right.

22 MS. BLOCK: Your Honor, the next point is an important
23 one. The debtor stated under penalty of perjury that he's a
24 hundred percent owner of six companies. His interest in those
25 companies are property of the estate set forth in Section --

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1 Bankruptcy Code Section 541(a). Bankruptcy Code Section 1108
2 authorizes the trustee to operate the debtor's business. The
3 case law explains the Chapter 11 trustee stands in the shoes of
4 a debtor and possesses the economic and governance rights to
5 participate in the management of a debtor's wholly owned
6 company that the debtor enjoyed before the --

7 THE COURT: But doesn't that happen automatically?
8 The concern courts often have in orders is the more you specify
9 things that people say, well that actually is included, well,
10 but then add it, is then you have problems of arguments about
11 exclusion. Well, Judge, if you identified the following five
12 things in this order, but you didn't identify things 6, 7, and
13 8, they aren't included. And so that's why you'll see a lot of
14 judges say to the extent applicable law that it is what it is,
15 what it is. So that's -- in the context of this case, whatever
16 the unique set of facts, that's sort of a traditional kind of
17 concern about dictating in the order exactly what the order
18 means. It means whatever the law tells us it would mean if a
19 trustee is appointed.

20 MS. BLOCK: Your Honor, we completely agree. That
21 should happen automatically. But we're worried that if the
22 order isn't crystal clear, the parties won't abide by it.

23 Additionally, the United States Trustee took the
24 position that that was not appropriate relief that instead, it
25 would be -- it would infringe on the trustee's independent

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1 judgment. So we think it needs to be clear for all parties
2 that that's exactly what happened.

3 THE COURT: Well, I'm guessing -- and the U.S.
4 Trustee's Office at the end of this can sort of chime in -- is
5 that they might say a Trustee might say as to that entity, we
6 don't have any interest, we're just going to leave it alone
7 because it doesn't -- we found it didn't really have economic
8 substance that is worth attending to for purposes of this case.
9 So I'm guessing that their -- the U.S. Trustee's Office view
10 sort of reflects that exercise of independent judgment, that
11 it's just not worth fighting about certain things or the
12 trustee spending the time and money to assert control over
13 things that they think -- he or she thinks don't ultimately
14 help with the case.

15 MS. BLOCK: And we would definitely agree with that
16 business judgment. If we have a shell entity with nothing in
17 there, there's no point in furthering that. But we just want
18 to be crystal clear, given what a key component of our argument
19 is, that he's using his businesses inappropriately and
20 weaponizing them in this case, that the trustee would take
21 control of those business, governance rights and management.

22 THE COURT: Well, if a trustee were appointed, I would
23 expect in this case, as in any case, that the trustee would
24 look at the motion papers that led to a trustee appointment as
25 well as the oral argument and be well versed. And my

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1 experience is that's what folks do.

2 MS. BLOCK: Thank you, Your Honor.

3 Finally, we are requesting that any individual or
4 entity in possession of the debtors records or property
5 cooperate with the trustee and turn over such records and
6 property of the estate to the trustee. This provision should
7 not be controversial and find support in Bankruptcy Code
8 Section 542. No party has identified any case law to the
9 contrary. And there's no reason for nondebtors to hold on to
10 estate property and records once the Court -- once a trustee is
11 appointed.

12 THE COURT: All right.

13 MS. BLOCK: With that. Your Honor, we have reached
14 the end of the committee's presentation. And we respectfully
15 request that the motion be granted.

16 THE COURT: All right. Thank you very much.

17 MS. STRICKLAND: Your Honor, do you want to hear from
18 the whole side first?

19 THE COURT: I would think -- I don't know if you had a
20 chance to talk about it. I would think it probably makes sense
21 to hear from the Freeman plaintiffs before we hear from the
22 debtor.

23 All right. So let's do that. That way debtor's
24 counsel can respond to everything. I'm guessing that it
25 probably makes sense to hear not only from the Freeman

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1 planners, but from the U.S. Trustee's Office and then debtor's
2 counsel can bat clean-up in terms of responding to whatever
3 arguments have been.

4 MR. FISCHOFF: Sure.

5 THE COURT: All right. Thank you.

6 THE COURT: Counsel?

7 MS. STRICKLAND: For the record, Your Honor, Rachel
8 Strickland, Willkie Farr & Gallagher on behalf of the Freeman
9 plaintiffs.

10 When someone shows you who they are, believe them.
11 And I won't repeat how Mr. Giuliani has shown himself to be
12 dishonest, incompetent, and someone who has grossly mismanaged
13 his estate.

14 Your Honor has nonetheless given him a lot of grace.
15 And like a debtor should, you enabled him to appear before you
16 with a clean slate. But look at how he has flouted you and the
17 law post-petition. He's not a doddering eighty-year-old. He
18 is a shrewd and manipulative man. His reports are false,
19 inconsistent, and late. His deadlines are ignored. He's
20 funneling money to a nondebtor LLC, referred to by his counsel
21 as his alter ego.

22 But per the debtor's reply at docket 256, his
23 bookkeeper is ill, his accountant has quit, and no one else
24 will work for him. That is not an excuse. Those are huge red
25 flags that warrant that adult supervision that 1104 provides.

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1 And once again, Giuliani's pleading makes clear that the whole
2 case is about the Freeman plaintiffs.

3 And I have to say, I don't really get it. If all of
4 his money is outside of the estate and nothing to do with the
5 case and he wants to litigate, all he had to do was not file to
6 begin with unless, of course, it was a pure litigation tactic
7 to be used against the Freeman plaintiffs.

8 And then in an advocacy piece filed with a lot of
9 chutzpah, Giuliani agrees throughout -- attaches this whole
10 draft and argues that all of the statements he made about the
11 Freemans were without malice. Well, they should tell that to
12 the fourteen-year-old son of my client who received racist
13 death threats, the grandmother who was harassed, and my clients
14 who the FBI said should move for their own safety.

15 This pleading is an insult, and it's worse. The
16 pleading says that this is all Pre-petition conduct. It's not.
17 The last time I was here, I repeated the almost daily things
18 that Giuliani was saying on podcasts and elsewhere. And you
19 admonished him twice. And his counsel said that they would
20 relay the message that Your Honor said to just close his mouth.

21 And our administrative claims are mounting. We have
22 filed them, and they are growing. So we thought the resolution
23 was going to be an injunction that he would agree to. We
24 entered into a stipulation. Giuliani agreed he would stop
25 defaming my clients and abide by the injunction. We got an

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1 order of the District Court. This was late May.

2 So this morning I printed a recent tweet from the
3 mayor, which is dated June 3rd, 2024. He has 1.7 million
4 followers, but I'm sure other people read it as well. May I
5 approach?

6 THE COURT: Yes. Please provide a copy to everyone
7 else.

8 MS. STRICKLAND: So if you look at the tweet, I think
9 this is X now, but I think they're still calling it tweets --
10 if you look at the second part of the sentence, he's talking
11 about a video of ballots being run through counting machines
12 two and three times. This is the specific allegation that he
13 has made over and over and over again which is false about my
14 client. And then he follows up with the cherry on top I refuse
15 to be silenced.

16 Well, I don't really know what's happening here if
17 he's agreeing to the injunction and has acknowledged that he
18 has a legal obligation to be silent and no longer defame our
19 clients if he's putting this out after the District court
20 enters the order. So he just won't follow the law.

21 The creditors are unanimous. We all need this relief.
22 We don't need any further evidence. Your Honor can observe all
23 of the hard facts before you. A trustee is warranted, and we
24 need it immediately. Thank you, Your Honor.

25 THE COURT: Thank you.

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1 All right. Let me hear from the United States
2 Trustee's office, and I'll hear from debtor's counsel.

3 MS. SCHWARTZ: Thank you, Your Honor. Andrea Schwartz
4 for the United States Trustee.

5 As stated in our papers, Your Honor, we're not taking
6 a position on the committee's motion for the appointment of a
7 Chapter 11 trustee. Our issues concern the paragraphs in the
8 proposed form of order. And we'll address them since they have
9 been addressed by the committee and the Court is hearing
10 argument on that.

11 I think Your Honor got it right. And certainly I know
12 this from appearing before this Court many times. It is what
13 it is, is what it is. And the statute provides exactly what
14 the duties and obligations are of the United States Trustee
15 with respect to the appointment of a Chapter 11 trustee. And
16 the United States Trustee takes that responsibility very
17 seriously and acts expeditiously.

18 In paragraph 2 where the debtors are asking for the
19 immediate appointment of a Chapter 11 trustee, the United
20 States Trustee is of the view there's no need for the word
21 immediate. We take that responsibility very seriously, and we
22 will act expeditiously.

23 Further, the notation in that paragraph after
24 consultation with the committee, it's correct. Of course the
25 U.S. Trustee consults with all parties-in-interest, not just

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1 the committee. We will reach out to all parties-in-interest in
2 the case, as we do in every single case. And there's no need
3 for that language to be there because it does give the
4 impression that somehow the opinion of the committee or the
5 recommendation of the committee is somehow more important than
6 other parties-in-interest. The U.S. Trustee will, as the
7 statute requires and is his statutory obligation, consult with
8 all parties-in-interest if, in fact, the Court decides it will
9 appoint a trustee.

10 With respect to paragraph 4 that talks about taking
11 control of the companies, Your Honor, I think you hit it right.
12 Again, when you were making comments with respect to the
13 committee's presentation, the Chapter 11 trustee needs some
14 time to be able to determine whether or not taking control of
15 any of these entities has any value to the estate, whether or
16 not he can take control. He has to look at the operating
17 agreements. Just because a trustee gets appointed and steps
18 into the shoes of the debtor and becomes the one hundred
19 percent owner does not necessarily mean he becomes the managing
20 member.

21 And if one looks at any of the cases that the
22 committee cited, each of those cases were decided on state law.
23 And none of the appointment orders in those cases included at
24 the time of appointment that the trustee should take control of
25 the nondebtor companies. Certainly, if there are benefits to

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1 managing those and there are assets there, that is going to be
2 part of the U.S. Trustee's appointment, subject to the Court's
3 approval, of the Chapter 11 trustees' business judgment.

4 Clearly --

5 THE COURT: So is one way to address this to have the
6 order just identify things that the Trustee can look at and
7 sort of including but not limited way?

8 MS. SCHWARTZ: Well, Your Honor, if Your Honor feels
9 that it's important to do it, that's okay. But we don't think
10 it's even necessary. All the -- it's --

11 THE COURT: I see your point. And again, another way
12 to sort of address this is the fact that I always understand
13 that if there's an appointment of a Chapter 11 Trustee in
14 cases, they also -- they always make a point of looking at the
15 history of their appointments so they understand --

16 MS. SCHWARTZ: Right.

17 THE COURT: -- why they've been here. And I guess
18 your point is that -- and it's not necessarily a bad idea in
19 this case, but it may be a burdensome precedent because it may
20 encourage parties in any case where trustee is appointed to
21 identify what things should be on that list and what things
22 should be --

23 MS. SCHWARTZ: Judge, that is --

24 THE COURT: -- on that list and what things shouldn't.

25 MS. SCHWARTZ: That is a hundred percent correct. And

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1 I will tell you, Judge, even the cases cited here, they're not
2 on all fours with this case at all. So what we would really
3 not want is another order getting entered where then anyone
4 that's seeking the appointment of trustee starts laying out
5 what the trustee has to do. It's a statutory duty. And in
6 these cases, by the way -- one of the cases that was cited was
7 In re Kwok (phonetic), which is in our district, that was a
8 motion by the Trustee made a month and a half after his
9 appointment when he determined that he wanted to take control
10 of that wholly owned company. That was not part of the -- that
11 was not part of the appointment order. And I think we run into
12 a lot of problems, Judge. And I would I would implore the
13 Court not to do that because then that just becomes more going
14 back over other cases and notwithstanding -- even if the Court
15 were to say this is not supposed to be a precedential value, my
16 experience is that there will be some case where someone will
17 raise it for precedential value.

18 THE COURT: I can take judicial notice of the fact
19 that orders are often cited to judges here and in other
20 districts. I'm not saying that that proves to be particularly
21 persuasive necessarily, but I understand your point.

22 MS. SCHWARTZ: Okay. Your Honor, also, with respect
23 to paragraph 5, that's another thing that the committee wants
24 to impose on the trustee before the Trustee even gets his sea
25 legs, if you will, before he even get to handle of everything

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1 that's going on in the case. The notion that the Trustee has
2 to immediately take possession of all books and records of
3 nondebtor entities, again, it goes right against the trustee's
4 business judgment. As Your Honor said earlier, it may be. It
5 may be --

6 THE COURT: Well, that one I -- I haven't appointed a
7 trustee yet. But certainly in the case in front of me, central
8 to the argument is the fact that -- and indeed admitted by the
9 debtor, regardless of what the outcome is, that essentially the
10 records are a mess. And so I'm often concerned about having
11 these conversations to the extent that denial of request for
12 language is, is construed as in any way encouragement or a
13 blessing of the status quo. So I think I will just move on
14 without --

15 MS. SCHWARTZ: Oh, absolutely.

16 THE COURT: -- because I can certainly -- of all the
17 things that are identified here, I can -- this one is eminently
18 understandable, the record that I have in front of me. But
19 beyond that, I think I will say nothing. And we can move on to
20 any other comments that you have. That's probably the high
21 watermark of where to leave that.

22 MS. SCHWARTZ: Well, I just want to say one other
23 thing, Your Honor, which I didn't say earlier with respect to
24 this taking control of the entities and taking control of all
25 the books and records. Your Honor may be aware that the

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1 Corporate Transparency Act was effected January 1, 2024. And I
2 think many owners of companies and so forth are still getting
3 their arms around that. And that's why we mentioned in our
4 papers that it was imperative that the that the Chapter 11
5 trustee have all opportunity to examine these nondebtor
6 companies before taking on responsibility to the extent there's
7 no value or no benefit to the estate.

8 THE COURT: No, I got it. I got it. Anything else,
9 Ms. Schwartz?

10 MS. SCHWARTZ: No, Your Honor, thank you. Just so
11 when I want to raise things at the case management conference.

12 THE COURT: Yes. Please remind me if --

13 MS. SCHWARTZ: Thank you, Your Honor.

14 THE COURT: -- I drop the ball on that.

15 THE COURT: Thank you. All right.

16 I think I've canvassed all parties who wish to be heard
17 on this other than the debtor. All right. With that, let me
18 hear from debtor's counsel.

19 MR. FISCHOFF: Good afternoon, Your Honor. Gary
20 Fischoff for the debtor.

21 So there's been a lot said this morning or this
22 afternoon about the debtor in connection with this motion. And
23 I think there were perhaps three categories. There was the
24 issue of the debtor who's an individual operating through an
25 LLC. There was the issue of the debtor's reporting. And then

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1 maybe there was a catchall of everything else. So first I'm
2 going to try to address stuff generally then maybe get more
3 specific.

4 The Bankruptcy Code says that the Court shall appoint
5 an operating trustee in the event it finds cause or if it's in
6 the best interest of creditors. Cause is not a defined term.
7 It's used throughout the Bankruptcy Code for various matters.
8 And it's really a finding of fact by the Court based on the
9 view of the entirety of the circumstances.

10 Now, a lot -- and also the part 2 is for the best
11 interests of creditors. I think as will be demonstrated, the
12 appointment of a trustee is not in the best interests of
13 creditors. In fact, it's harmful to the interests of
14 creditors.

15 But let me first go to what's -- lot been said that
16 the debtor has entities or an entity basically that he
17 operates. The debtor generates personal services income
18 besides the Social Security which we don't talk about. The
19 personal services income is generated by him doing podcasts or
20 radio shows where he is the show. He is the producer of the
21 content. He is the one that attracts the audience. And it's
22 his services that bring in the income. The fact that he does
23 it through an LLC or a corporation is nothing unusual, nothing
24 dishonest, and not an effort --

25 THE COURT: I don't think anybody is quibbling with

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1 that notion. I think what they're -- what the argument --

2 MR. FISCHOFF: That's not what I heard.

3 THE COURT: -- I've heard is that if you do that, then
4 you have to provide information because it can't be on a trust
5 me basis. And so for example, a specific instance here is that
6 he provides the services, but he is also then individually
7 paying the expenses that are not being run through those
8 entities when those entities are getting the income. And
9 that's putting aside the fact that there appears not any
10 dispute that those entities haven't -- there's no documentation
11 and transparency into how those entities run the numbers.

12 MR. FISCHOFF: So bad habits die slowly. All of the
13 credit cards he had at the commencement of the case have been
14 canceled, which they should have been. Unfortunately, he was
15 still engaged in some of that pre-petition activity where he'd
16 pay an expense. You know, that was business expense.

17 THE COURT: I understand that. And while this case
18 has some very interesting circumstances about it, this is a
19 traditional bankruptcy problem, right? So I've certainly seen
20 plenty of cases, the Seinfeld Bagel King. Helmer Toro was in
21 this court probably a decade ago. He had a lot of different
22 businesses. And sometimes they charged -- one business would
23 charge another business rent to 5,000 dollars month. Sometimes
24 the rent would be zero. But they were separate entities that
25 had separate creditors. And so we all have the experience of

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1 giving people a certain amount of time to turn the aircraft
2 carrier and figure out that bankruptcy requires something
3 different perhaps than what they're used to doing. But we've
4 been here too long to be having that discussion.

5 MR. FISCHOFF: Well, I understand that it's taken some
6 time. But what's important is the debtor has been paying these
7 expenses not with creditors' money, with his own money.

8 THE COURT: But how do I -- how do I know that? How
9 does anybody know that if there's no transparency into the
10 record? So is there a record of Giuliani Communications that
11 you can show me that says here's how all the money is flowing,
12 here's where the money came from, here's where it went?

13 MR. FISCHOFF: No, not yet. But there is a record --

14 THE COURT: But not yet. That's an unfortunate
15 statement for you to have to make at a hearing --

16 MR. FISCHOFF: Well, Judge --

17 THE COURT: -- this late in the case.

18 MR. FISCHOFF: -- there is record of the 206,000 of
19 exempt funds going into his personal account. And with those
20 exempt funds, he's paid the maintenance on the New York
21 apartment, which is up for sale, and preserved the equity for
22 the creditors.

23 THE COURT: But I'm not even sure that I know that. I
24 know the -- without knowing anything -- the more complete
25 financial picture, all I know is that money was put in from

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1 exempt assets and that various things were paid. But I don't
2 know if anything about Giuliani Communications -- without that
3 kind of information, nobody can say anything with any
4 confidence.

5 MR. FISCHOFF: Okay. I think we can say with
6 confidence, and no one's disputing the fact that he brought
7 206,000 of exempt funds into the DIP account and paid expenses
8 of the estate with that personal money and preserved equity in
9 the two homes by paying their taxes and common charges. So on
10 the one hand, they complain that he's paying those. But on the
11 other hand, they're not disputing that it came from his
12 personal money.

13 THE COURT: But --

14 MR. FISCHOFF: As far as Giuliani --

15 THE COURT: But again, if we don't know what the
16 income, potential income would be or what amount the debtor was
17 entitled to or could take -- reasonably take from the entities,
18 we don't know how these things compare, right?

19 MR. FISCHOFF: Yes. I agree. And unfortunately --
20 well, it's taking the debtor some time. I think the debtor is
21 improving his reporting. And it doesn't indicate an intent --
22 an intent for deception or dishonesty. It's just slow to adapt
23 which I understand. It's been several months. But on the
24 other hand, the debtor --

25 THE COURT: Of course, the test is not necessarily

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1 focused solely on bad intent, right? So if there's gross
2 mismanagement, there can be plenty of things that are -- don't
3 involve bad intent but are a reflection of the facts on the
4 ground to say this -- these are the obligations. They're not
5 happening. And therefore, they satisfy one or more of the
6 tests that are identified.

7 So while the motion and various creditors have come
8 forward and said, Judge, we think there's plenty here for you
9 to find intent, but the -- but the statute doesn't necessarily
10 even require me --

11 MR. FISCHOFF: Okay, but it does --

12 THE COURT: -- to find bad intent --

13 MR. FISCHOFF: It does require best interest of the
14 creditors. And in this particular case, the appointment of a
15 Trustee is not in the best interest of creditors because, 1,
16 it's going to add -- I mean, the assets in this case are
17 limited to two categories: the assets he owned on the filing
18 date and whatever their value is upon liquidation and by the
19 way, the equity that's apparently being preserved by him using
20 exempt assets to pay those associated expenses. But the other
21 asset in this case 00 and everyone's talking about let's take
22 control and operate as business, his business is an eighty-
23 year-old man doing personal services. If he decides to retire
24 next week, all we have are those limited physical assets.
25 So -- and --

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1 THE COURT: Well, but --

2 MR. FISCHOFF: And the liquidation -- Judge, everyone
3 talked for a long time. Man, I just finished my thought?

4 THE COURT: Yes, but I interrupted various people
5 along the way. That's the way I guarantee --

6 MR. FISCHOFF: Okay.

7 THE COURT: -- that I -- if I have a question to ask
8 you that I ask you and then you give me --

9 MR. FISCHOFF: Okay, go ahead.

10 THE COURT: -- you can give a chance to --

11 MR. FISCHOFF: I'm sorry.

12 THE COURT: -- share your wisdom. The issue that
13 always comes up when somebody else asserts the interest of the
14 creditors who isn't the creditors is that people say, well,
15 we've got what represented parties here who are sophisticated
16 and are fully capable of deciding what they'd like to do. So
17 what's your response to that?

18 MR. FISCHOFF: Well, I understand the motivation of
19 the Freeman creditors. Obviously, they have a judgment and
20 they want that judgment to remain in place. And I know I'm
21 going to say something that I've said before. Nobody really
22 likes to hear it. But there's 150 million reasons why the
23 Freeman case should be appealed. How can a creditor --

24 THE COURT: But see --

25 MR. FISCHOFF: How can a creditors' committee not be

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1 interested in having that overturned? We do have an arguable
2 basis. I mean, we have a draft brief that shows this is not
3 pie in the sky. It's --

4 THE COURT: But I don't have a motion to reconsider my
5 prior denial of the order.

6 MR. FISCHOFF: No, you don't.

7 THE COURT: And I will say that in the conversation
8 back and forth, I denied the motion, making it very clear that
9 the reason for the denial, among other things, was my concern
10 that the debtor viewed the case as solely about an appeal of
11 that litigation. And that progress had been exceedingly slow
12 is one way of putting it. You can take a more aggressive tact
13 on that. And that granting a further request in a case that
14 stayed would reinforce that message.

15 And so for example, we bump into other things that
16 have happened in this case, for example, the idea of selling
17 the Florida premises, which is a motion that's sub judice. I
18 took it under advisement. It's not exempt property. The
19 argument has been made that the debtor doesn't need to live
20 there as opposed to somewhere else, given the value of that
21 property. And there's been -- all quiet on that. So no one
22 has sort of taken any hints or any action to deal with that.

23 And there hasn't been progress on a whole host of
24 other things. In fact, I'm not sure there's been any
25 significant progress since the time we heard that motion to

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1 lift stay --

2 MR. FISCHOFF: Well --

3 THE COURT: -- and now.

4 MR. FISCHOFF: The property in New York has been
5 formally listed. The broker -- the order has been entered
6 authorizing the retention of Sotheby's to market that property.
7 So that's underway. And the debtor is generating income from
8 his personal services. I recently the other day received a
9 contract, a new contract he received for a five-day-a-week
10 daily internet show or radio show. I'm not sure. I emailed it
11 to creditors this morning. I received it on Father's Day. And
12 that's going to generate approximately an additional 180,000
13 dollars income.

14 So the debtor is working and trying to obtain
15 additional employment. And I think it's slow. It's not like
16 this is a business that's generating operating revenues and
17 there are claims objections and other administrative aspects.
18 This is really an individual with a huge creditor claim that I
19 know it's not the singular focus, but out of 150 million and
20 change in creditors, that's ninety-nine percent of it. So it
21 needs to be addressed. And we will consider renewing that
22 motion or refiling it. Regardless of what happens today, it
23 needs to be addressed.

24 But I think overall, I'm not going to say -- look, the
25 debtor has an obligation to comply with the administrative

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1 obligations for the benefit of being in the Bankruptcy Court.
2 There's no question about it. And the debtor is making every
3 effort to do that. But I don't think that on balance requires
4 that an operating trustee to be appointed, to do what? To get
5 the bookkeeper for his business who I understand was out sick
6 or something to comply faster to turn over the records, which I
7 understand he's talking to the creditors committee about? Is
8 it going to make the debtor work harder?

9 THE COURT: Well, this is why I asked questions and
10 jump in, because there's a lot to unpack in what you've said
11 over the last few minutes.

12 MR. FISCHOFF: Okay.

13 THE COURT: So the debtor has not shown any ability to
14 have a bookkeeper or an accountant work on his behalf.

15 MR. FISCHOFF: For him individually, correct.

16 THE COURT: Right. And he is an individual debtor.

17 MR. FISCHOFF: Correct.

18 THE COURT: Certainly I would expect that situation to
19 not be true if a Trustee were appointed. I do think that the
20 failure to retain a bookkeeper, an accountant is a troubling
21 fact. What I would take from that beyond it being troubling,
22 I'm not sure. But it is exceedingly rare for such an event,
23 that kind of a problem to exist in a case. The usual instance
24 is where someone says they're not going to be paid. But short
25 of that, this is a normal thing to have happen.

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1 But let me also back up to an earlier comment you made
2 about administrative expenses. And I'm trying to identify for
3 you the things I'm concerned about so that you can respond to
4 them.

5 MR. FISCHOFF: Okay.

6 THE COURT: As for administrative expenses, it's
7 pointed out by the Freeman plaintiffs that some of the work
8 that the debtor does is leading to statements which, from the
9 Freeman plaintiffs' point of view, are is going to lead to
10 additional liabilities. And it's also -- and they made a claim
11 for administrative expenses. And we have that. So you could
12 view that in terms of an argument by various parties whether
13 you talk about bad faith, good faith, whether you talk about
14 just garden variety administrative expenses and increasing
15 liabilities.

16 So I'm not sure that a trustee would necessarily fix
17 all of that, but it certainly couldn't hurt, given that we've
18 had very recently a conversation about this issue and at least
19 from what I have been shown today, that conversation seems to
20 not have resulted in progress.

21 MR. FISCHOFF: Well, I just saw this also I guess the
22 same time the Court saw it. And I don't see any reference to
23 the Freeman -- I mean, the injunction --

24 THE COURT: Counsel, let's not be clever. I think it
25 would be impossible for anybody who's familiar with that issue

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1 to not connect this with that litigation. It seems that that
2 doesn't seem plausible to me. So you may not have much that
3 you can say about that, and maybe we leave it at that. But
4 again, to identify --

5 MR. FISCHOFF: I'll leave it at that.

6 THE COURT: To identify the arguments that have been
7 made and how I'm viewing them, the other -- that's a reason you
8 could consider it in the context of intent, but you could also
9 consider it in the context of very Machiavellian liabilities
10 being created during the course of the case. So --

11 MR. FISCHOFF: Well, a trustee may not change that. I
12 don't know, Judge.

13 THE COURT: That's a fair point. That's a fair point.

14 MR. FISCHOFF: I don't know. But look, they went
15 through a lot of specifics. I don't think I need to go through
16 each one. I can tell you the credit cards that were causing a
17 problem have been canceled. The debtor will -- I mean, if the
18 Court says we want reporting, we'll get reporting on the
19 entity. I believe the entity that generates the income is
20 Giuliani Communications. I'm not sure. I mean, he had some
21 left over entities from when his life was more complicated with
22 more businesses. But we will endeavor to get the committee,
23 U.S. Trustee a report of the income and expenses for the
24 business. I've been advised that so far, at least up until
25 recently, the income did not exceed the expenses and therefore

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1 there was no dividend to the individual. Now, with a new
2 contract and so forth, that may change, but I'm not in a
3 position to say.

4 As a matter of fact, judge, so far today, we haven't
5 really had any evidence before the Court. We've had a nice --

6 THE COURT: Well, these are --

7 MR. FISCHOFF: -- presentation that I saw for the
8 first time when it was handed to me. We had papers submitted.
9 But I would submit that for the Court to appoint a trustee
10 under -- in a contested matter such as this, the Court should
11 conduct an evidentiary hearing so that --

12 THE COURT: So let me ask you about that. But let me
13 back up. What I'm seeing cited in here are things in the
14 context of this case. So I'm seeing pleadings of which I can
15 take judicial notice. And I'm seeing sworn testimony that was
16 done in the context of examinations, for example, an
17 examination February 7th. And I'm seeing, again, docket 133,
18 222 about further disclosures, 341 meeting, and a check. It's
19 discussed in the opposition. I mean, I'm not seeing things
20 that that are not rooted to and anchored in this case. And it
21 would seem that I'm having trouble identifying in my quick flip
22 through the papers things that of which I couldn't take
23 judicial notice because they're not -- I mean, the only thing
24 from the internet is this. And I don't need to take -- I'm not
25 taking anything for the truth or falsity of the matter

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1 asserted. I understand this to be, Judge, this is out there,
2 and it says what it says, and we have an argument about it.
3 But, I mean, everything else seems to be anchored to this case.

4 So what is it that we need an evidentiary hearing for?
5 What is it that's not appropriate for me to consider?

6 MR. FISCHOFF: Well, judge, the 341 meeting testimony,
7 in one instance, he's questioned about the payment he makes to
8 his ex-wife's -- o his ex-mother-in-law. And he says I don't
9 know if it's court ordered or I don't know if I -- if it
10 wasn't, I would have done it any way. I mean, that's 341
11 meaning testimony. But what does that do? Or he says I don't
12 know --

13 THE COURT: Think that was used in the context of
14 disclosure. So that's why I asked that question, that it's --
15 that argument is not made in the context of saying that's an
16 inappropriate payment. It was used in the context of, Judge,
17 if you look at the schedules, that's not there. If you look at
18 the disclosures about ongoing costs, that's not known.

19 MR. FISCHOFF: No. But his payments under his
20 matrimonial order were disclosed.

21 THE COURT: All right.

22 MR. FISCHOFF: And he disclosed it is 341 meeting. We
23 ultimately obtained with some difficulty the divorce papers and
24 sent it to the committee. So they had to -- they see it was
25 court-ordered.

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1 THE COURT: Frankly, I don't consider the payments for
2 Mr. Giuliani's mother-in-law to be the thing that is going to
3 decide this case. We have plenty of other issues.

4 MR. FISCHOFF: But --

5 THE COURT: And so I will just say it's cited as a
6 question about transparency into finances. I took it in that
7 context. You have some responses. That's fine.

8 But again, what I'm -- a lot more of what I'm hearing
9 is things about, say, Giuliani Communications. And I suppose
10 the only thing in which I don't have in evidence is I have a
11 representation, but it's not refuted in the reply that there
12 have been no documents produced from Giuliani Communications or
13 the other entities.

14 MR. FISCHOFF: I understand that the creditors'
15 committee is in touch with the part time bookkeeper for
16 Giuliani Communications, and they're discussing it. I don't --
17 I can't say more than that, but I understand that.

18 But, Judge, again, I still think that there isn't
19 sufficient evidence. There are statements. There is legal
20 argument. There are copies of documents that haven't been
21 admitted into evidence. So --

22 THE COURT: Well, if you have specific evidentiary
23 objections, you should make them. And I'll deal with them. I
24 understand the argument from your point of view that I don't
25 have sufficient evidence. The folks on the other side, I

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1 think, disagree with that. But if there's specific evidentiary
2 objections, I need to hear them. I'm not going to get into an
3 umbrella, well, the evidence is a little wonky, Judge, and that
4 prevents you from considering the merits of the motion. So if
5 there's specific, again, objections, I didn't see any in the --
6 in the reply. I saw the statement saying that you were
7 requesting an evidentiary hearing. And my question to the
8 hearing is going to be what is it that we need evidence on. An
9 evidentiary hearing puts people on the stand.

10 And so is there a request to put your client on the
11 stand, to put other clients on the stand? I mean, that that's
12 what -- that's what evidence looks like.

13 MR. FISCHOFF: Yes.

14 THE COURT: People receive for summary judgment
15 documents all the time. And so that's what I have here. I
16 have the traditional stack that judges receive.

17 MR. FISCHOFF: Yeah.

18 THE COURT: And so if there's specific evidentiary
19 objections, I'm happy to hear them and decide them, take
20 them -- either decide them now or take them under advisement.
21 But I need something more than we should have an evidentiary
22 hearing as a general statement.

23 MR. FISCHOFF: Well, I think perhaps the debtor needs
24 to take the stand in connection with this matter. I mean --

25 THE COURT: But for what purpose? You control the

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1 debtor. He could have supplied a declaration in response to
2 all this. I don't have that.

3 MR. FISCHOFF: Right.

4 THE COURT: So again, the idea is that there's been
5 something that's provided where you say I don't have a chance
6 to respond to that. The debtor is your client. I mean, I
7 understand this is a challenging case. But this is the way it
8 goes. There's a motion made. And then you have a chance to
9 respond. And that's how it works, just like a motion for
10 summary judgment, a motion to dismiss, whatever it is. And if
11 there's specific objections to evidence that the other side,
12 that is the committee, the Freeman plaintiffs. have referenced,
13 then that's -- I'll hear that. But I need, again, something
14 more specific as to what it is that I need to decide as an
15 evidentiary matter that's an open question.

16 MR. FISCHOFF: One minute, Your Honor.

17 So, judge, I have nothing further to say. Mr. Caruso,
18 who's here, I guess would just like to speak for a moment, if
19 he may. He was the prospective attorney whose retention was
20 not authorized because the appeal wasn't authorized at that
21 time to go forward. But since it was brought up, I think he
22 would just like to make a brief statement.

23 THE COURT: Well, I'm not here to reargue the motion
24 to lift stay.

25 MR. FISCHOFF: I don't think that's what he's going

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1 to --

2 THE COURT: No, no. wait a minute. I haven't given
3 you leave to speak.

4 MR. FISCHOFF: Sorry.

5 THE COURT: So you need -- again, just like the
6 evidentiary point, you need to be a little more specific and
7 give me a little more to work with than he wants to speak about
8 the appeal, because they haven't raised the status of the
9 appeal as relevant to what they're requesting. And to the
10 extent that I denied the request to lift the stay to take
11 further steps on the appeal, I certainly wouldn't hold that
12 against you in the context of this motion because that was my
13 decision. So I'm trying to -- I'm struggling with
14 understanding --

15 MR. FISCHOFF: So --

16 THE COURT: -- how a conversation about this is
17 relevant.

18 MR. FISCHOFF: Well, so, Judge, it's not going to be
19 about the appeal. May Mr. Caruso say specifically what he
20 wants to address? And the Court can say yes or no.

21 THE COURT: Well, I'm going to give you a chance to
22 chat.

23 MR. FISCHOFF: Okay.

24 THE COURT: And you can --

25 MR. FISCHOFF: Okay.

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1 THE COURT: And explain it to me after you chat.

2 (Counsel confer)

3 MR. FISCHOFF: Okay. So the brief that -- the draft
4 brief that was next to the debtor's papers, there was a comment
5 from the Freeman plaintiffs' counsel that it was an insult, and
6 he just wants to address that it's not an insult. He didn't
7 intend to insult the Court.

8 THE COURT: I'll take it in that vein, but I don't
9 know that that's relevant to what I have to decide. So I'm not
10 going to take -- it's several steps attenuated from what my
11 inquiry is. So the proposed draft of papers to file an appeal
12 and the response to that proposed draft is pretty far afield
13 from what I have to decide. So I'm not -- I'm not going to
14 take that comment about offense taken or his spirited defense
15 of his honor as something that I need to decide.

16 I'm always mindful in cases that there are times when
17 people sometimes need to speak to defend their honor. But it
18 is also my job in those circumstances if that's not what I need
19 to decide to tell people there's no need to defend your honor
20 in this context because it's not the thing I'm deciding and I'm
21 not going there. So I can tell you that.

22 And if there's something else you want to address,
23 you'll let me know. But that's not something I need to delve
24 into at this time.

25 MR. FISCHOFF: Nothing further on Mr. Caruso. Thank

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1 you.

2 THE COURT: All right.

3 MR. FISCHOFF: Just one moment.

4 THE COURT: Sure. Take your time.

5 In fact, here's what I'd like to do. I'd like to take
6 a short break to make sure that everybody has had enough time
7 to look at the PowerPoint. If anybody has any questions or
8 concerns, I think it -- the comments that were made I think
9 fairly track the pleadings that were made and are essentially
10 just a demonstrative. Again, I'm only considering it for
11 purposes of whatever I have in the record both in terms of
12 arguments that have been made and evidence that's been cited
13 to. But this way you'll get a chance to canvas your team about
14 anything else you want to address. It'll also give the
15 committee and the Freeman plaintiffs a minute to gather
16 thoughts about if there's anything you want to say in response.
17 Seems to be about the right time to do this.

18 My thought would be, rather than take a break for
19 lunch to just take five or ten minutes here and then come back
20 and wrap it up unless you all have desire to tour the offerings
21 of the wonderful City of White Plains.

22 Sol let's take a ten-minute break. And I will come
23 back out in ten minutes.

24 MR. FISCHOFF: Thank you.

25 (Recess from 2:01 p.m., until 2:17 p.m.)

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1 THE COURT: Thank you. Please be seated. Good
2 afternoon.

3 So we took a break as I wanted to make sure everybody
4 had enough time to address any issues about the PowerPoint,
5 which, again, I'm only considering in the context of the
6 arguments and the facts that have been presented in the motion
7 and the reply and the opposition. So if it's not in there, I'm
8 not considering it in here. And also to make sure that parties
9 had a chance to go through their notes and think about anything
10 else they want to say. I realize I ask a lot of questions and
11 I do damage to people's otherwise beautiful presentations. So
12 I'm happy to always give folks a chance to take a look at their
13 notes.

14 So with that, I'll turn it over to debtor's counsel
15 for any issues you wanted to raise on anything frankly.

16 MR. FISCHOFF: One other minor point I wanted to bring
17 up, and I did forget. This morning I received an email. And
18 the debtor has been making efforts to get an accounting
19 professional on his team. And I did receive an email this
20 morning of somebody who was interested and had experience in
21 doing bankruptcy reporting and joining the debtor's team to
22 provide that information. I mean, I don't have more other than
23 the email, but at least somebody knows the situation and is
24 willing to become involved which is more than we had last week.

25 THE COURT: All right. I appreciate the update. And

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1 obviously keep interested parties in the loop on that.

2 So let me just make sure I've sort of addressed any
3 issues. Is there any issue with me considering -- the
4 PowerPoint presentation, again, it was -- counsel walked
5 through it in argument. So but again, I told you the basis on
6 which I'll consider it. But I wanted to make sure, given the
7 timing of it, that there was nothing in particular you wanted
8 to point for -- that you were concerned about. So Mr.
9 Fischhoff, anything you wanted to address on that score?

10 MR. FISCHOFF: Well, look, it was a surprise. and I'm
11 not consenting to it. I understand the Court is not taking it
12 as evidence. But I think absent having been provided to me in
13 advance I could compare it to the papers that were previously
14 filed, I have a standing objection to it even being considered
15 by the Court.

16 THE COURT: All right. Is there anything in
17 particular that you wanted to identify? Again, my view is that
18 it follows the motion papers that exist. And there's -- I
19 don't think there was anything that counsel raised in her
20 presentation that was problematic in the context of arguing the
21 motion.

22 MR. FISCHOFF: I can't say. It's twenty-nine pages.
23 Their papers were -- their reply papers, along with thirty-two.
24 So I haven't been able to do a --

25 THE COURT: No, that's fine.

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1 MR. FISCHOFF: -- side-by-side comparison. So I don't
2 know.

3 THE COURT: Okay. All right. That that's fine.
4 Again, I'm going to consider it as an aid to the argument we
5 just had, meaning that she walked through it as she went
6 through a presentation. But it's not evidence per se. And so
7 I think I've made that pretty clear. So I'll -- I've permitted
8 it for that use and that use only.

9 So as to any other points. The debtor wanted to
10 address on the record for purposes of arguing the motion. Mr.
11 Fischoff, anything else that you wanted to address given the
12 break and a chance to gather your thoughts?

13 MR. FISCHOFF: No, that's it, Your Honor.

14 THE COURT: All right. Thank you very much.

15 All right. So with that said, I will loop back to the
16 committee that started us off to see if there's anything else
17 the committee wanted to address. I know that you had already
18 addressed sort of your response sort of in advance. So you --
19 so I have all that. And so there's no need to repeat anything.
20 But I certainly want to give you a chance if there's of a newer
21 vintage that you wanted to add.

22 MS. BLOCK: Your Honor, I do have a few points, but
23 Ms. Strickland would like to go first.

24 THE COURT: That's fine.

25 MS. STRICKLAND: Your Honor, this is just as very

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1 brief --

2 THE COURT: I will say, I will try to come up with a
3 name for these things because -- that's as good as any as we
4 pass it back and forth. All right.

5 MS. STRICKLAND: For the record, Rachel Strickland,
6 Willkie Farr & Gallagher.

7 I just wanted to note one thing that Mr. Bischoff
8 mentioned in the update to the case of how things were going
9 better. And he referenced a contract that he emailed us this
10 morning that is 180,000-dollar speaking engagement. So we did
11 receive this contract actually right after we walked into the
12 courthouse. And it really underscores exactly what the problem
13 is. The contract is between a company and Rudy Giuliani,
14 comma, Giuliani Communications, LLC. That's who the contract
15 is. Giuliani is obviously going to be the person speaking.
16 He's going to anchor some shows for them. It's 180,000
17 dollars.

18 Then you go to the signature pages. And the signature
19 pages have company that's hiring them. And then there are a
20 couple of signatures. Mr. Giuliani signs under Giuliani
21 Communications, LLC. And inexplicably Maria Ryan signs it as a
22 contractor. I don't really know what's going on there. And
23 that's it. So once again, it was cited as we've got income
24 coming in. But when you look at all of the reports, we don't
25 have anything coming in. There's zero dollars coming into the

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1 estate. And it seems that whenever Mr. Giuliani has a business
2 opportunity, he shoves it into one of these shells and keeps
3 going. So the progress that was touted is more of the same.

4 And again, this is the contract that they emailed us
5 this morning. So I think it underscores the problem.

6 THE COURT: All right. Thank you very much.

7 And on behalf of the committee?

8 MS. BLOCK: Your Honor, for the record, Rachel Block,
9 Akin Gump Strauss Hauer & Feld.

10 Building off that, the debtor's counsel said that
11 progress had already been made by generating income. Where is
12 it? Nothing has ever been reported to us in the monthly MORs
13 or otherwise.

14 Additionally, the debtor's counsel talks about
15 significant -- about 150 million dollars of claims against the
16 debtor. He's ignoring significant unliquidated claims and
17 other creditors' claims in favor of his singular focus on the
18 Freeman plaintiffs.

19 Your Honor, we completely agree. We don't need an
20 evidentiary hearing. Nothing is disputed, and it's all on the
21 record. We have pleadings, MORs, and filings related to this
22 motion.

23 And finally, the debtor's counsel said something about
24 we'll give you more reporting. We've given the debtor plenty
25 of time to provide that reporting. We've asked them to comply

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1 with financial disclosures. We asked them to comply with the
2 Rule 2004 order. He's provided none of that reporting, not for
3 him and not for his business. Thank you.

4 THE COURT: All right. Thank you. Anything else from
5 the U.S. Trustee's office before I hear from the debtor?

6 MS. SCHWARTZ: No, Your Honor. Thank you.

7 THE COURT: All right. Thank you.

8 Mr. Fischhoff, any parting words?

9 MR. FISCHOFF: Well, again, here we have the debtor
10 who generates personal services income operating just like any
11 other lawyer, accountant, doctor through an LLC and being
12 criticized. I understand the reporting issue, but that wasn't
13 what the Freeman plaintiffs are complaining about. They're
14 complaining about hey, he's generating income and it's going to
15 his business. And by the way, Maria Ryan, I understand, is an
16 officer of Giuliani Communications.

17 THE COURT: Okay. So I took the point of the
18 committee just now on this to be -- and Ms. Strickland as well
19 to be that this is presented as this is going to be additional
20 income to the case. And I think what I'm hearing is, Judge, we
21 have a number of relationships like this, and it's never
22 resulted in income that we've seen in the case because it's
23 gone through Giuliani Communications. And once all -- whatever
24 payments are being made are made, the debtor has gotten
25 nothing.

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1 So I think what they're saying is that it doesn't
2 necessarily evidence progress. It evidences activity but not
3 value that is demonstrable in the case. And that's -- and I
4 think that's what I understand Ms. Strickland's sort of
5 exploded view of the signature block to reflect that concern.

6 So is there anything you want to address on that
7 front?

8 MR. FISCHOFF: Well, I didn't understand that to be
9 the case. And I understand up until recently the income coming
10 into the business with its expenses, including a few employees,
11 hadn't resulted in a dividend to the debtor. That may have
12 changed in -- that may have changed in May. I understand where
13 I see a report later today perhaps, and we can file it.

14 But the point is, whatever, I understood it to be
15 different, complaining that, again, he's operating through an
16 entity which, again, I say is perfectly normal and appropriate.
17 And nothing further. Thank you.

18 THE COURT: All right. And so I think -- but let me
19 ask you again. I'm just trying to do the math which
20 occasionally we need to do here in this courthouse. So if, as
21 I understand it, the payments in connection with other
22 contracts with -- where the money has gone through Giuliani
23 Communications, I think one of them reflected -- I think it was
24 14,000 dollars and another 10,000 dollars a month. And so if
25 you take 180- and divide by twelve, you end up with 15,000

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1 dollars a month. And I think --

2 MR. FISCHOFF: And when it begins --

3 THE COURT: Yeah. So I think that the concern is that
4 it's a similar kind of -- it looks like a similar kind of
5 contract. And if the debtor hasn't realized any profits from
6 that or any income that is -- that can be used in this case,
7 why would this one be any different? And because it's also
8 done through Giuliani Communications and also has other folks
9 involved in it. So you may have an answer to that. You may
10 not. This isn't something that was in the in the papers. But
11 I think it was a response to something you raised. And I think
12 what they're telling me is, Judge, you can't really take very
13 much -- So for example, the live stream Tunnels to Towers was
14 16,000 dollars a month. And the WABC radio is 14,000 dollars a
15 month. This, I think, comes out to 15,000 dollars a month.
16 And so I think they're drawing comparisons between what
17 happened there and what might happen here. And so that's how I
18 understand it. So I don't know if you have anything in
19 particular to -- I'm trying to put as much of a fine point on
20 it so I can get whatever comments you have.

21 MR. FISCHOFF: I'm answering. So, Judge, there's a
22 point where business expenses are paid and excess income would
23 be in common and perhaps income to the individual. And my
24 understanding is in the past, the gross revenue had not
25 exceeded the expenses. But as I said, my understanding is that

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1 point may have passed recently. And if there's new additional
2 income, then that should in theory enure to the benefit of the
3 individual debtor's estate. I don't have the numbers in front
4 of me, so I'm just giving you a theoretical answer. But I'm
5 not to state otherwise.

6 THE COURT: All right. Thank you very much. Anything
7 else, Mr. Fischhoff?

8 MR. FISCHOFF: No, Your Honor.

9 THE COURT: All right. Thank you.

10 So I realize that it's now a little after 2:30 and we
11 just finished item 1 on the contested matters agenda. We also
12 have the motion to compel monthly operating reports and a
13 discovery conference.

14 So the motion to compel monthly operating reports is
15 the official committee's motion. We certainly have covered a
16 lot of the same ground. And I know we've been talking about
17 these issues at a variety of hearings. I actually have a list
18 of various things we've discussed at various hearings in
19 connection with disclosure and monthly operating reports. So I
20 think I have a very good handle on it.

21 But let me ask the committee whose motion it is to
22 sort of sum up sort of where we are and it and what is it today
23 problem and what is not.

24 MS. BLOCK: Your Honor, for the record, Rachel Biblo
25 Block, Akin Gump Strauss Hauer & Feld on behalf of the

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1 Official Committee of Unsecured Creditors.

2 Your Honor, we don't view this particular motion as a
3 today problem. As you said, we've discussed it at length in
4 our motion to appoint a trustee and at previous hearing. So we
5 don't think there's anything further to discuss right now.

6 THE COURT: All right. So with that, I'll sort of cut
7 to the chase and turn to Mr. Fischhoff. I would expect, in
8 light of that statement, that you probably don't have anything
9 you want to comment on, but I don't want to -- I want to give
10 you an opportunity.

11 MR. BERGER: Thank you, Your Honor. Heath Berger for
12 the debtor.

13 THE COURT: Mr. Berger?

14 MR. BERGER: Your Honor, no. We don't really have
15 much to say. We filed the April reports. I did get a text
16 that the May report should be done in the next day or so. I
17 just want to make sure I review it before we upload it. So
18 hopefully that will be done. And like Mr. Fischhoff said,
19 hopefully we could actually have a professional come in for the
20 next month's operating reports which should hopefully keep
21 everything within acceptable to the U.S. Trustee and to the
22 creditors' committee. But the reports at least have been
23 filed, Your Honor. And the June -- the May report will be
24 filed also.

25 THE COURT: All right. Thank you very much.

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1 And so let me ask you if anybody has -- anyone else
2 has a comment on this particular motion. If not, I think now
3 would be a good time to hear from Ms. Schwartz as to the issue
4 she wanted to raise. And then we can turn to the 2004 thing
5 that's on -- listed as a Discovery conference.

6 So anybody else on the motion to compel monthly
7 operating reports? All right. Hearing no response, we'll turn
8 to Ms. Schwartz with the issue you wanted to raise.

9 MS. SCHWARTZ: Thank you, Your Honor. I won't take up
10 much of the Court's time. I just wanted to bring to the
11 Court's attention that we're very concerned about professionals
12 representing Mr. Giuliani in other legal matters post-petition
13 for which there hasn't even been a retention application filed.

14 Specifically, Your Honor, in the Georgia criminal
15 election racketeering case that's pending in Fulton County,
16 Georgia, there's an attorney named Allyn Stockton who's been
17 making appearances on behalf of Mr. Giuliani post-bankruptcy.

18 In addition, there's another case that's pending in
19 the District of New Hampshire that Mr. Giuliani commenced
20 against President Joe Biden. And he's got two lawyers. And
21 that one's pending in the U.S. District Court in the District
22 of New Hampshire. And he's got two lawyers there, Mr. Louis
23 Diamond and Mr. William O'Brien, who have made appearances on
24 his behalf. And we haven't had any retention applications.

25 The Court should know that I have made many, many

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1 phone calls to debtor's counsel regarding these retentions, and
2 we still don't have an order entered for the Aidala law firm,
3 which has been on the docket for several months. I was given a
4 proposed order last week with respect to it, and that seems to
5 say that the debtor is seeking to have Mr. Aidala's firm
6 represent him also in the Georgia election case that's pending
7 down in Fulton County.

8 So we wanted to raise it and bring it to the Court's
9 attention that there appears to be -- there appear to be
10 attorneys that are representing the debtor post-bankruptcy not
11 in compliance with 327 or 2014. And we're actually close to
12 filing a motion to dismiss or convert the case because all of
13 these things that are going on here are extremely problematic.
14 And I wanted to bring that to the Court's attention.

15 THE COURT: All right. Thank you very much.

16 So let me ask Mr. Berger or Mr. Fischhoff whether
17 anyone wants to comment on this from the debtor's perspective.

18 MR. BERGER: Sure, Your Honor. Heath Berger, Berger
19 Fischhoff Shumer.

20 I know that the attorneys in the New Hampshire case
21 and the Joe Biden case, we've been back and forth. They
22 finally last week sent me some documents. I think they're
23 working actually on a contingency basis. So I finally got all
24 the paperwork that was signed obviously pre-petition so I could
25 bring on those motions to do.

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1 As far as Allyn Stockton, I think he's been
2 appearing -- Judge, will reach out to them again to get the
3 retention on that. And obviously there is going to get to a
4 point where Mr. Giuliani is looking for an attorney, obviously,
5 to represent him in the current case that was just filed, the
6 criminal charges. And we're waiting to find out who he's been
7 speaking to. And we'll deal with that also.

8 THE COURT: All right.

9 MS. SCHWARTZ: Judge, may I just be heard on that for
10 one second?

11 THE COURT: Yeah.

12 MS. SCHWARTZ: And that is that answer, Your Honor, is
13 the same answer that we've received for months in this case.
14 So I think it's important to bring it to the Court's attention,
15 especially in light of the pending motion that you've got that
16 was filed by the committee to give the Court the biggest and
17 most full picture of what's going on in this case.

18 THE COURT: All right. Thank you very much. Duly
19 noted.

20 Anyone else wish to be heard on that particular issue
21 before we segue to the discovery conference? That's the last
22 item on the agenda. All right.

23 So let's do that. So we're now on page 3 of the
24 agenda under the gigantic heading discovery conference. And it
25 relates to the motion -- the official committee as authorizing

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1 discovery of the debtor and third parties at docket number 164.

2 And so let me ask the committee to tee it up, and
3 we'll see where we go from there.

4 MR. HILL: Good afternoon, Your Honor. David Hill,
5 Akin Gump Strauss Hauer & Feld, on behalf of the Official
6 Committee of Unsecured Creditors.

7 Your Honor, yes, we requested the discovery conference
8 today last week with your chambers which we appreciate they
9 approved.

10 As respect to I'm going to call it three entities, one
11 is the debtor himself, two is the debtor's wholly owned
12 entities, and three is Ms. Maria Ryan, I'm not sure if Ms. Ryan
13 is on the phone. She was on the scheduling email. I was given
14 indication she may be, but I just want to make sure she's
15 present, on the line.

16 THE COURT: All right. Let me ask if Ms. Ryan is
17 present on the line. All right. I'm not hearing any response.
18 So I think we can assume that she is not.

19 MR. HILL: Okay. Thank you, Your Honor.

20 I think a lot of the ground we've covered today is
21 going to be a little bit retried here, but I wanted to give a
22 little context.

23 THE COURT: And let me -- sorry to interrupt you. Let
24 me back up for a second. I'll let the parties know that at one
25 point, Ms. Ryan called chambers directly to talk about the

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1 case. As is the case, the instance when that happens, she was
2 given the following direction, which is anything that she
3 wanted to share, she needed to file on the docket. She could
4 send it to our chambers and we would file it. She could file
5 it. Obviously, we don't engage in ex parte communication. And
6 in fact, my law clerk identified who had called and why. And
7 essentially the very large picture that Mr. Ryan wanted to
8 communicate about the Giuliani case.

9 And so I didn't listen to the email -- or the voice
10 mail, other than, I think the first seven seconds because,
11 again, I am not engaging in ex parte communication. Anybody is
12 free to submit whatever they want in the context of the case.
13 Always happy to receive it. But it's important for purposes of
14 transparency, which has been a watchword for today, that
15 everybody knows who's talking to who when it comes to the
16 Court.

17 So sorry to interrupt you, counsel. I'm glad you
18 mentioned that though. I wanted to get that on the record, and
19 I had forgotten. Please proceed.

20 MR. HILL: Thank you, Your Honor.

21 I think given that Ms. Ryan is not on the line, it
22 makes more sense to proceed with the debtor and the debtor
23 entities first. And then we can handle that at the tail end.
24 Thank you.

25 So I want to give a little context to the discovery

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1 here, because I think it's important for the conference. On
2 March 6th, we first reached out to the debtor with our proposed
3 2004 order and proposed discovery. And we had our first
4 conversation on March 14th. We identified for the debtor
5 priority discovery items on March 22nd. We then proceeded to
6 file our rule 2004 order, which the Court entered on April
7 11th. And that, Your Honor, is at docket Number 164.

8 Your Honor, I'd like to point to one specific
9 paragraph of docket entry 164, which is paragraph 3,
10 specifically the last sentence. The debtor and debtor-related
11 entities are directed to respond to the requests within twenty-
12 one days -- calendar days of service and a complete production
13 no later than May 24th, 2024.

14 I've heard the debtor's counsel today represent
15 several times to the extent we want information and reporting,
16 we'll get it. Your Honor, it's been crystal clear for over
17 three months that we want that information. In fact, we sent
18 discovery requests. We filed a discovery motion. We then
19 served discovery requests on the debtor and his entities.

20 As my colleague reported earlier, to date we have
21 received from the debtor pursuant to a rule 2004 requests
22 fifteen documents in two FedEx productions on May 6th and May
23 8th. We have not received anything further in the past month
24 pursuant to our rule 2004 request nor, and this is particularly
25 crucial for the issues we have raised today, anything from the

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1 debtor related entities, particularly Giuliani Communications
2 and Giuliani Partners. It's difficult to say particularly
3 because we received nothing from any of them.

4 They've said repeatedly today that we should ask for
5 information. One company is operating, one isn't. The easiest
6 way to do this -- to show this to the committee, Your Honor, is
7 to produce the documents that were requested pursuant to the
8 2004 request and to have produced them timely. They did
9 neither of those things. We've never received formal responses
10 and objections. We don't know exactly what they have. We
11 don't know exactly what they've been told. We've repeatedly
12 emphasized to the debtor and his counsel that we expected
13 compliance with the Court's deadline. Not that such
14 reiteration should have been necessary, but to avoid any
15 implication that we were not asking for this information, we
16 did so.

17 The short of it is after we got the -- we failed to
18 get responses, we sent a email to the debtor's counsel on June
19 6th requesting confirmation that he would comply immediately
20 with the production. We received no response.

21 On June 10th, we emailed chambers requesting a -- this
22 particular conference. We received no response.

23 And on June 10 the debtor -- the same day the debtor
24 filed his objection to the motion. And I think it bears worth
25 quoting. On page -- excuse me, paragraph 16, "While the debtor

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1 may be struggling with some of the administrative aspects, he
2 has always been fully transparent and open about his finances."

3 Your Honor, that is simply not true. And I think the
4 fact that we are here today on a discovery conference with
5 respect to productions from Giuliani Communications and the
6 debtor himself and all of the other debtor entities belies
7 that.

8 I know that debtor's counsel today has attempted to
9 I'm going to say pass the buck to the part time bookkeeper of
10 Giuliani Communications. One, Your Honor, Giuliani
11 Communications is the debtor's wholly owned entity. And the
12 debtor's counsel today is reiterated that he is doing
13 predominantly all of his business, if not entirely his
14 business, through this entity. The fact that none of this
15 documentation is produced, that we've not R&Os and other issues
16 is obviously very troubling for the committee and I think bears
17 on the relief request of the motion. I'm not here to reargue
18 that.

19 The point, Your Honor, is we have not received this
20 information and received no communication to the debtor as to
21 why he has failed to comply with this Court's orders and his
22 production requirements for both him and his wholly owned
23 entities.

24 THE COURT: All right. I got it. So is there
25 anything you wanted to get into with Ms. Ryan in terms of

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1 status? I have no idea whether Mr. Berger or Mr. Fischhoff
2 would address that or not. O you think it's best with since
3 she's not here to hold off on that? I'll leave it to your
4 considered judgment, counsel.

5 MR. HILL: Your Honor, I'm happy to address Maria Ryan
6 right now. Actually, one issue that was raised just a few
7 moments ago by I believe Mr. Fischhoff was that Maria Ryan is
8 apparently an officer of Giuliani Communications. Her email
9 address is actually at Giuliani Partners. The email address we
10 had used to communicate with her both on June 5th and 7th, she
11 had not responded until about 7 a.m. this morning whereupon she
12 denied that she had ever been served. Your Honor, we have an
13 affidavit of service from the process server that she was, in
14 fact, served on May 14th at the debtor's apartment. She was
15 conclusively identified by photographs and in fact prior
16 photographs taken the prior day of a livestream that she had
17 done with the debtor.

18 But I don't know if -- I presume the debtors do not
19 represent -- or excuse me, Mr. Berger and Mr. Fischhoff don't
20 represent Ms. Ryan. If that is the case, they can certainly
21 correct me. But with respect to her, all we've received from
22 her is a denial that she was served. We believe that she was.
23 The Court's requirements obviously require a reach out to her
24 in order to resolve any disputes. And when we didn't hear back
25 from her, we asked for the discovery conference.

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1 THE COURT: All right.

2 MR. HILL: So that that's where we are with Ms. Ryan.

3 THE COURT: Got it. All right. so Mr. Berger and Mr.
4 Fischhoff, your thoughts and -- as to Ms. Ryan, it would be
5 helpful to know what you're understanding is in terms of what
6 official role she plays or doesn't play.

7 MR. BERGER: Thank you, Your Honor. Heath Berger,
8 Berger Fischhoff Shumer.

9 If I could take two steps back, Your Honor. There was
10 a first tranche of discovery requests which we did provide to
11 the committee. They also did informal 2004 examination of the
12 debtor which lasted a couple of hours. They asked us to
13 produce the debtor, and we did it. They've also said they want
14 to do a more formal one. We said let us know what dates were.

15 My understanding, Your Honor, was that the official
16 committee was provided with information from the accountant of
17 the companies, Mr. Ricci (ph.). I understand that he sent
18 documents. I haven't seen them, Judge. But I understand he
19 was subpoenaed, and he responded with financials and stuff
20 to --

21 THE COURT: But we just had an argument where I was
22 told that there had been nothing produced by the company. So
23 I'm having trouble squaring this with what I -- my
24 understanding was leaving earlier. And frankly, it surprised
25 me to hear that you wouldn't have a copy of that. These are

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1 his wholly -- these are his entities, right? We've just talked
2 about how he's -- and we're going to talk about that a little
3 bit more in a minute. But I'm struggling understanding then
4 what the state of play is.

5 MR. BERGER: Judge, I was advised by -- that he sent
6 the information in regard -- in regard to the subpoena and to
7 respond to it. I do also understand that Mr. Medrano, who is
8 the bookkeeper, I think, reached out to the creditors'
9 committee, also indicating that he was working on providing the
10 information.

11 THE COURT: Well, I only want to hear about responses.

12 MR. BERGER: Sure.

13 THE COURT: People can reach out to each other all the
14 livelong day. And I -- that means -- can mean a lot of things.

15 So I want to know what was produced. And was it Mr.
16 Giuliani's information? Again, I think it had been represented
17 to me that there was nothing from Giuliani Communications
18 that's been produced. Am I missing something on that?

19 MR. BERGER: Again, I'm going to ask the creditors'
20 committee if they received information from Mr. Ricci.

21 MR. HILL: Your Honor, we in addition to serving the
22 debtor and the debtor-related entities also subpoenaed Mr.
23 Ricci directly. And we subpoenaed Mr. Medrano as an identified
24 individual. We have not yet received any production from Mr.
25 Medrano. I'm frankly at a loss. We served separate subpoenas

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1 and requests on the debtor. The debtor's engaged with us
2 initially, made two very small production and didn't -- and
3 have not -- so to be clear, Giuliani Communications nor any of
4 the entities have produced documents. Mr. Ricci did make a
5 production of certain financial information but not the recent
6 information and not the information we're asking for today, the
7 more recent productions.

8 THE COURT: All right. Well, what did he -- what did
9 he give? Was he duplicative of things that were already
10 produced? Was it individual -- I'm just trying to get a handle
11 on things.

12 MR. HILL: Your Honor, Mr. Ricci was not represented
13 by counsel. He just gave us a tranche of documents which we
14 reviewed which were financial information for the debtor in his
15 personal capacity. And I'm a little bit perplexed that the
16 debtor is representing today that that solves the problem, that
17 we haven't gotten responses, objections, or materials from
18 communications.

19 THE COURT: So am I correct in understanding your
20 comment to translate to the following statement, which is that
21 while you've gotten some information from various people, you
22 haven't gotten any documents from anybody for Giuliani
23 Communications and Giuliani Partners?

24 MR. HILL: I can't say that we don't have any
25 documents for Giuliani Communications and Giuliani Partners.

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1 What I can say, and I think this is reflective of today's
2 bigger issue, is that we have an incomplete collection of
3 documents from Giuliani Communications and Giuliani Partners.

4 THE COURT: Right. Well, I need to get a handle on
5 that for purposes of figuring out what to do with discovery.
6 And recognize -- I mean, the problem also becomes if the
7 People who are supposed to respond don't respond. It also
8 raises the question of what you can rely upon or not rely upon
9 for purposes of somebody saying I am an authorized
10 representative of X, and I am providing you with this as
11 opposed to being subpoenaed in their individual capacity. And
12 whether people adopt or don't adopt those responses, it gets to
13 be a mess. And that also puts aside the whole notion that's
14 well established that a party that has possession, custody, or
15 control of documents is supposed to produce the documents.

16 And from what I'm hearing about the entities, the
17 debtor has possession, custody, or control of the documents.
18 So the debtor should be producing anything that has to do with
19 his entities because there's doesn't seem to be theory under
20 which he doesn't have control over that so he can direct people
21 who are working for those entities for him, as he said in his
22 papers, in numerous points, to respond.

23 So I understand why the committee sent things to
24 people in their individual capacity. Necessity is the mother
25 of invention. But it's not the -- it doesn't work that -- it's

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1 not supposed to have to work that way.

2 So let me turn back to the debtor on this because,
3 again, Mr. Giuliani holds the keys. So what can you tell me?

4 MR. BERGER: That's correct, Your Honor. And I know
5 the debtor is working on trying to get all the documents that
6 he can. We've spoken to him. He understands his
7 responsibility. Obviously, he's being pulled in a number of
8 different directions with a number of different actions that
9 are going. And unfortunately, one thing sometimes takes
10 priority over another. And I apologize to the Court because
11 this should be one of the most important things right now. And
12 we will do a yeoman's job, Your Honor, to get whatever we can
13 to provide as quickly as possible to the creditors' committee
14 in regard to the information. And hopefully between Mr.
15 Medrano and what Mr. Ricci provided, that should at least come
16 to a somewhat of a real picture.

17 THE COURT: If Mr. Ricci responded to his subpoena in
18 his individual capacity --

19 MR. BERGER: Correct.

20 THE COURT: -- I'm not sure what -- it's like standing
21 on quicksand. I'm not sure what anybody can do with that kind
22 of information because it's -- somebody could easily say not
23 authorized to do it, there's no chain of custody, mean, it's
24 not a business record. I mean, there's all sorts of -- we were
25 talking about evidence before. There's all sorts of potential

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1 pitfalls. So while I'm not saying it doesn't count, it's
2 awfully close to saying it doesn't count if he's responding in
3 his individual capacity which it sounds like, am I right,
4 counsel, that was what his response was?

5 MR. HILL: Yes, Your Honor. It was produced by him
6 directly without the --

7 THE COURT: Yes.

8 MR. HILL: -- as I think the counsel's made clear,
9 without their involvement. Perhaps they didn't even provide it
10 to him.

11 THE COURT: All right. So I don't think I can take a
12 whole lot from that production. And again, given the whole
13 rules about possession, custody, and control, there's a reason
14 we rarely, if ever, get to that kind of a question because it
15 should be necessary. So --

16 MR. BERGER: Understood, Your Honor.

17 THE COURT: All right. So let me ask the committee.
18 Anything else that we should chat about in connection with the
19 discovery conference? I'm not sure we made a huge amount of
20 progress, but we've at least tried to identify and cabin off
21 the issues.

22 MR. HILL: Your Honor, I think the next step would
23 be -- I know that they said they'd make a yeoman's job. Again,
24 the production deadline was May 24th. I think it would be
25 beneficial to have the Court establish a date certain by which

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1 they would complete their production, and if they don't, we
2 would then be able to move for the next step of motion to
3 compel or sanctions without having to have another conference
4 with the Court.

5 THE COURT: Yeah. That's fine. We'll get a date, and
6 we'll use that as the control date. Of course, it's always
7 awkward in the sense that the Court entered an order. And so I
8 know that the drill for discovery as well and then its order to
9 compel and for sanctions and whatever. We already have an
10 order. So at a certain point, failure to comply with orders
11 will mean that my tone takes a decided -- it takes on a decided
12 edge, which I at this point have tried to avoid using because I
13 don't know necessarily that it helps for certain things. But
14 people don't obey court orders, it's a profound problem. And I
15 will not be kind on that score. And the record in this case
16 suggests that I should be exceedingly concerned about the
17 failure to comply with court orders.

18 So anything else, counsel?

19 MR. HILL: Yes, Your Honor. Last part is with respect
20 to Ms. Ryan, I think we fulfilled the two steps required under
21 the Court's requirements of, A, scheduling the conference and
22 B, or -- rather A, reaching out to her, B, scheduling the
23 conference. I think C, the next step is a motion.

24 THE COURT: Well, but again, we have the same issue.
25 I understand she's an employee or an officer of these entities.

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1 And if you get things in her personal capacity, you're on the
2 same unsure footing as if you get it from Mr. Ricci. Again,
3 maybe there's some case law out there that suggests that I'm
4 reading things too narrowly. But the whole point is you want
5 it from the entities. You want somebody to say this is
6 produced on behalf of Giuliani Communications. And so you
7 don't want to have impediments to being able to make that
8 statement in court.

9 So I'm not disagreeing with you that she's received a
10 request. It sounds like you represent she has not complied.
11 She's not here. She had notice of this. At the same time, my
12 goal is to try to meaningfully reach a level of finality on
13 discovery so that you don't end up having a whack-a-mole
14 problem, you solve one problem and something else pops up.

15 So I would say we'll use the same date in connection
16 with that. But again. There's a court order. I understand.
17 It's been represented that she is an officer of these entities
18 that are the debtor's entities. And so I've been provided with
19 no explanation or statement that if the debtor says to her to
20 respond, that she wouldn't respond. And so that's highly
21 problematic.

22 MR. HILL: Thank you, Your Honor. That's it for me.

23 THE COURT: Thank you.

24 Anything else? As to the discovery conference?

25 All right. So I think the next thing we need to do is

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1 set a date. I have a list of dates here that I've covered over
2 with other papers but I seem to have located. So I'm assuming
3 that thirty days makes a lot of sense here. I know that we
4 have a -- we have a hearing on July 10th on another substantive
5 motion in the adversary proceeding. I suppose we could use
6 that as a date.

7 I'll be guided by what you all think is an efficient
8 use of your time. I know this morning you had to hang around
9 for a while, so I'm always anxious to try to avoid people
10 having to spend too much time waiting in the wings. So does
11 anybody have a suggestion what they'd like to do?

12 MR. BERGER: I mean, we have to be here anyway on the
13 10th, Your Honor. So it just as an efficient use of funds and
14 assets, why don't we -- does that work for you guys?

15 Mr. QURESHI: Well, Your Honor, for the record, Abid
16 Qureshi, Akin Gump, on behalf of the committee.

17 Just to clarify, is the date Your Honor is inquiring
18 about now deadline by which they must produce or would this be
19 a whole --

20 THE COURT: Well, there's already a deadline.

21 MR. QURESHI: Okay. So this is a whole day for the
22 motion to compel?

23 THE COURT: So this would be to the extent you wanted
24 to take further steps.

25 MR. QURESHI: Yes.

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1 THE COURT: The other thing we could do is treat it as
2 a status conference. I understand you're not trying -- you're
3 trying to be efficient. And so I certainly will not hold it
4 against you if you decide to hold off and say, Judge, we're
5 going have one more status conference. You might decide you
6 want to file a motion. You might be trying to get to the
7 bottom of people responding their official capacities as
8 employees or corporate officers versus in their individual
9 capacities. There are a lot of ways to look at this.

10 MR. QURESHI: Sure.

11 THE COURT: So we I'm also happy to give you a date.
12 And if you decide you want to file something to be heard in
13 that date, you can do it. If you decide to just treat it as a
14 status, we can do that. So your option depending on how things
15 go.

16 MR. QURESHI: Appreciate that flexibility, Your Honor.
17 We would like to use July 10th to have the motion to compel
18 heard. And we'll file in advance of that. Obviously, to the
19 extent that becomes unnecessary, then we can use it as a status
20 conference. But we don't have the luxury of time, given how
21 far beyond the deadlines we already are. So we'd certainly
22 like to have that date available to tee up the motion to
23 compel.

24 THE COURT: All right. And it sounds like Mr. Berger
25 is thinking that this is where we're going to end up in July

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1 10th. And so I'm fine with July 10th. It does mean -- today's
2 the 17th. I think you have enough time. But to the extent you
3 need to put things on appropriate notice, that means it does
4 put the burden on you to act properly. But if -- I'm happy to
5 give the 10th. And if for some reason your views change,
6 you'll talk to each other and you reach out to chambers. I'll
7 accommodate. Again, the lawyers know the ins and outs of the
8 case better than I do, so I'm just trying to be efficient.

9 MR. QURESHI: Fair enough, Your Honor. And also just
10 to be clear so there are no surprises, as things presently
11 stand, in addition to a motion to compel, I would imagine we
12 may be seeking sanctions as well. But we'll --

13 THE COURT: yeah.

14 MR. QURESHI: We'll see what happens.

15 THE COURT: I'm not surprised to hear that. And I
16 know also the U.S. Trustee's Office has its own set of issues.
17 And so anybody who wants to file something on the 10th can file
18 something to be heard on the 10th.

19 I think since we have enough challenges in this case,
20 I'm always conscious of the fact that shortening time raises
21 potential procedural objections. So I'm trying to avoid that
22 where necessary. So if you need to tweak dates, you, again
23 should think about that because, again, I'd like to decide
24 things on the merits rather than get bogged down in the morass
25 of procedural issues which is why I identified this whole issue

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1 about people responding to subpoenas in their individual
2 capacity to provide documents of a corporation. So --

3 MR. QURESHI: Your Honor, we'll confer with the
4 debtor. Hopefully we can agree upon dates for briefing and
5 proceed consensually with respect to that.

6 THE COURT: That's fine. And you can just --
7 whatever's the most efficient way to memorialize that. A short
8 letter would be fine.

9 MR. QURESHI: Great.

10 MR. BERGER: Thank you, Your Honor.

11 MR. QURESHI: Thank you, Your Honor.

12 THE COURT: all right. And remind me what time we're
13 on for the 10th.

14 MR. BERGER: 11 I think.

15 THE COURT: It's 11 a.m. So another thing is you sat
16 through a 10 o'clock calendar. I never know how long those are
17 going to last. And in fact, I canceled a few things and
18 adjourned things on Friday because I was afraid it would run
19 long, and it ran long anyway. So to the extent that would be
20 helpful, I can look at my calendar to see whether I can put you
21 on a 2 o'clock as the only customer on that day, if that's
22 helpful for you all. So let me know. Again, I'm just trying
23 to be mindful of people's time.

24 MR. QURESHI: That's certainly fine for us, Your
25 Honor.

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1 MR. BERGER: Yeah. Fine for us, Your Honor.

2 THE COURT: So I'm told we have a currently have a
3 lengthy 10 a.m. calendar. And the things have -- the wheel has
4 a sense of humor. So if you have a strong feeling one way or
5 the other, communicate it to chambers. If you don't, then I'll
6 just exercise whatever judgment in terms of setting the time.
7 We'll let you know promptly if we move it to 2 o'clock.

8 MR. QURESHI: Happy to defer to Your Honor.

9 MR. DUBLIN: Whenever the Court works.

10 THE COURT: Okay. All right. All right. And one
11 thing I don't want to forget to ask is I think people have been
12 ordering transcripts of these hearings. So I would assume that
13 that's going to be the case here as well. And so when that is
14 ready to hit the docket, you can -- when you have it, just send
15 it along. That's always helpful to have.

16 And with that, let me ask the debtor if there's
17 anything else to address here today.

18 MR. BERGER: Nothing else, Your Honor. Thank you very
19 much.

20 THE COURT: All right. Thank you very much.
21 On behalf of the committee, anything else?

22 MS. BLOCK: Nothing else, Your Honor.

23 THE COURT: All right. Thank you.

24 On behalf of the Freeman plaintiffs?

25 MS. STRICKLAND: Nothing, Your Honor.

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1 THE COURT: All right. On behalf of the U.S.
2 Trustee's Office?

3 MS. SCHWARTZ: No, Your Honor.

4 THE COURT: All right. All right. So with that, I
5 thank you all very much for the arguments today. Again, I
6 appreciate the back-and-forth dialog about the issues in the
7 case. And again, there are reasons to be very concerned here.
8 I'm not going to beat a dead horse. If there's ever anything
9 the Court can do aside from deciding motions in front of me
10 you'll let me know. Again, I'm never going to have a handle on
11 that the way you all have as to whether that would be
12 productive in any way, shape, or form, but I just think it's
13 appropriate to offer.

14 And with that, I wish you all a very good day. And
15 see you all July 10th. And stay cool this week. Thanks so
16 much.

17 (Whereupon these proceedings were concluded at 3:02 PM)

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C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a
true and accurate record of the proceedings.



Michael Drake (CER-513, CET-513)

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